BURR ARTICLE

Florida's Second District Court of Appeals Adopts a Dual-Track Approach For the Appraisal of Property Insurance Claims

By Jonathan Brown December 2020

When an owner seeks the appraisal of a property insurance claim, insurers commonly object by demanding that the trial court must first rule on defenses to coverage before allowing appraisal panel to value the total claim submitted by the owner. As a result, Florida courts have been hesitant to compel appraisal of an owner's property claim, usually valued through a public adjuster estimate, when coverage or scope issues persist and have not been first ruled on by the trial court. Florida's Second District Court of Appeal just bucked this trend, and concluded that a trial court can order appraisal of the whole claim without considering scope or coverage issues raised by the insurer, and the parties' appraisers or umpire may determine the total value of the claim. From there, the insurer may still object to any and all inclusions in the appraisal valuation that is not covered by the policy to remove them from any recovery, but the actual value of the claim no longer needs to be determined by the trier of fact.

In *American Capital Assurance Corp. v. Leeward Bay at Tarpon Bay Condo Assoc., Inc*., 2020 WL 6478224, (Fla. 2nd DCA November 4, 2020), Leeward Bay at Tarpon Bay Condo Assoc., Inc. ("Leeward Bay") made an insurance claim after Hurricane Irma and its insurer American Capital Assurance Corp. ("ACAC") covered the claim for approximately $76,000. Leeward Bay sought over one-hundred times the coverage afforded by ACAC and then demanded the appraisal of the claim pursuant to the policy. Leeward Bay filed suit afterward and moved to compel appraisal of the claim. ACAC asserted that the claim was now void due to Leeward Bay's hyper-inflated estimate, which constituted fraud under the policy, and maintained that the claim was now denied despite the initial coverage. The trial court granted the motion for appraisal over ACAC's objection, noting that the appraisal panel may arrive at the total value of the claim while still preserving ACAC's coverage defenses including fraud. ACAC appealed this order to the Second District Court of Appeal.

The *Leeward Bay* Court asked itself whether a trial court must always resolve coverage issues before compelling appraisal. It cited several opinions from the Third District Court of Appeal in support of the dual-track approach, including *Sunshine State Ins. Co. v. Rawlins*, 34 So. 3d 753, 754 (Fla. 3d DCA 2010) and *Paradise Plaza Condo. Ass'n v. Reinsurance Corp. of N.Y.*, 685 So. 2d 937, 941 (Fla. 3d DCA 1996). These cases, however, involve underlying claims where the insurer issued partial coverage for the claims and rejected the remainder sought by the owner. In this scenario, an appraisal may occur because at least a portion of the claim was covered by the insurer. This differs from *Leeward Bay*, where ACAC argued that the claim must be denied in total due to fraud. The *Leeward Bay* Court then explored the Fourth District Court of Appeal's rejection of the dual-track approach, citing *Citizens Prop. Ins. Corp. v. Mich. Condo. Ass'n*, 46 So. 3d 177, 178 (Fla. 4th DCA 2010), which held that "[a] finding of liability necessarily precedes a determination of damages." The *Mich. Condo. Ass'n* Court certified conflict with the Third District Court of Appeal's decision in *Rawlins*, but that conflict has not been resolved by the Florida Supreme Court.

After evaluating the contradictory doctrines, the Second District Court of Appeals sided with the Third, certified conflict with the *Mich. Condo. Ass'n* opinion from the Fourth, and adopted an even more lenient dual-track approach for property owners. Unlike the Third District Court of Appeals, the Second District explicitly permits an owner to seek appraisal of the full value of a disputed claim that was denied in total, and not just partially denied, by the insurer. The *Leeward Bay* Court justified this decision by advising how the appraisal of the total value of the claim could help prove ACAC's fraud defense, and that an objective evaluation of the claim through the appraisal can help decide whether Leeward Bay's estimate was fraudulently inflated. One could narrowly read this opinion to apply the dual-track approach only for denied claims where the insurer's coverage defenses are intertwined with valuation of the claim, but the breadth of its application may not stop there. The *Leeward Bay* Court also reflects on the judicial efficiency created by this approach by unencumbering the trier of fact from the laborious and time-intensive effort of determining the actual value of the loss, and then the trial court can simply limit the appraised value of the claim by shaving off whatever categories of damage are not covered by the policy.

While I believe the opinion was wrongly decided – and that a trial court should first rule on an insurer's coverage defense that fully negates the claim before compelling appraisal - there is no denying the significance of this decision. Going forward, property owners have a new arrow in their quiver and will consider compelling appraisal in all Florida districts other than the Fourth where the insurer denied coverage for the underlying claim and the owner seeks a speedy determination of the claim value through appraisal. Although most plaintiff property attorneys prefer a jury to an appraisal panel to value their property claims, this may not be the case for denied claims where plaintiffs and owners have more to lose at trial. Getting an early valuation of the denied claim through appraisal may serve as leverage against insurers where carriers get a preview of their liability should they lose on their coverage defenses. Property owners may also consider compelling appraisal to obtain a "win" against the carrier which could raise the settlement value of the case in general. Property owners' tricks and tactics after this opinion will certainly add a new wrinkle to defense strategies of denied property claims and may unfold in other unexpected ways. ACAC seeks the Florida Supreme Court's review of this opinion. I sure hope Florida's highest court weighs in as multiple certified conflicts among three of the largest jurisdictions in Florida make for some convoluted briefing on these issues!

DISCUSS FURTHER

[Jonathan Brown](#) at jbrown@burr.com or 954-414-6218
or the Burr & Forman attorney with whom you regularly work.

FOLLOW US