IN THE SUPREME COURT OF FLORIDA

CASE NO. SC20-1766

AMERICAN CAPITAL ASSURANCE CORPORATION

Petitioner, L.T. CASE NO: 2D20-165

vs.

LEEWARD BAY at TARPON BAY CONDOMINIUM ASSOCIATION, INC.,

Respondent.
_____/

PETITIONER'S MOTION TO STAY MANDATE

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Petitioner, American Capital Assurance Corporation, pursuant to Florida Rules of Appellate Procedure 9.310 and 9.340(a), moves to stay the mandate that will issue in this action (the "Mandate"). American Capital has asked this Court to review a November 4, 2020 opinion of the Second DCA (the "Opinion") (attached as **Exhibit A**), which affirmed an order granting Respondent, Leeward Bay at Tarpon Bay Condominium Association's motion to compel appraisal. The Second DCA certified that its decision conflicted with three decisions of the Fourth DCA. On December 11, the Second DCA denied American Capital's motion to stay the Mandate, and will issue the Mandate in due course.

As we explain below, the Mandate should be stayed because—given that the Second DCA certified a conflict with decisions of the Fourth DCA and that a conflict does exist—this Court is likely to accept jurisdiction. American Capital is also likely to prevail on the merits. Furthermore, Leeward Bay would not be prejudiced by a stay, but American Capital would be irreparably harmed if a stay is not granted. Absent a stay, American Capital must incur the expense of appraisal, which will be useless if this Court accepts jurisdiction, grants the petition, and reverses the Second DCA's Opinion.

BACKGROUND

American Capital insured 34 buildings at the Leeward Bay condominium complex (Op. 2). After Hurricane Irma, Leeward Bay filed a claim alleging

damage to the property (*id.*). American Capital agreed that about $76,000 of the loss was covered under the policy and paid that amount (*id.*).

Leeward Bay later submitted a proof of loss for over $8 million and requested appraisal under the policy (Op. 2). The following month, it sued American Capital for breach of contract and moved to stay the case and compel appraisal (*id.*). American Capital alleged that Leeward Bay had grossly inflated its claim, thus voiding the policy because of fraud (*id.*). At a (non-evidentiary) hearing on Leeward Bay's motion to compel appraisal, it argued that Leeward Bay "falsely inflated the claim well beyond its actual value which constitutes an intentional misrepresentation and/or concealment of fact" and that Leeward Bay included "things in their estimate that shouldn't have been included" (*id.*).

The Trial Court Order and the Second DCA's Decision

The trial court granted Leeward Bay's motion to compel appraisal, finding that the dispute concerned the scope of Leeward Bay's loss, rather than whether the policy covered the damage (Op. 2).

On appeal, the Second DCA affirmed (Op. 8-10). The court analyzed this Court's decision in *Johnson v. Nationwide Mutual Insurance Co.*, 828 So. 2d 1021 (Fla. 2002), which held that "coverage issues are judicial questions for the court; amount-of-loss issues are questions for appraisers" (Op. 4). The court also quoted from this Court's opinion in *State Farm Fire & Cas. Co. v. Licea,* 685 So. 2d 1285,

1288 (Fla. 1996), which held that "where there is a demand for an appraisal under the policy, the only 'defenses' which remain for the insurer to assert are that there is no coverage under the policy for the loss as a whole or that there has been a violation of the usual policy conditions such as fraud, lack of notice, and failure to cooperate" (Op. 5). The court recognized *Johnson*'s holding that "appraisers may not determine what caused the damage 'when an insurer wholly denies that there is a covered loss' because causation is exclusively a judicial question" (Op. 5) (quoting *Johnson,* 828 So. 2d at 1022-23, 1026).

Nevertheless, the Second DCA concluded that this Court "did not hold that the trial court had to resolve coverage issues *before* compelling appraisal" (Op. 5) (emphasis in original). Adopting the Third DCA's dual-track approach, it held that a trial court has the discretion to decide the order in which it resolves coverage and appraisal issues (Op. 7-8). It then certified conflict with three Fourth DCA opinions "to the extent that they hold the trial court must always resolve coverage disputes prior to compelling an appraisal" (Op. 9) (certifying conflict with *Citizens Prop. Ins. Corp. v. Demetrescu*, 137 So. 3d 500 (Fla. 4th DCA 2014); *Sunshine State Ins. Co. v. Corridori*, 28 So. 3d 129 (Fla. 4th DCA 2010); and *Citizens Prop. Ins. Corp. v. Michigan Condo. Ass'n*, 46 So. 3d 177 (Fla. 4th DCA 2010)).

American Capital has sought review of the Opinion in this Court because it certified conflict with the Fourth DCA. *See* Fla. R. App. P. 9.030(a)(2)(A)(vi). On

December 11, the Second DCA denied American Capital's motion to stay the Mandate. On December 14, American Capital filed its jurisdictional brief in this Court. American Capital now requests that this Court stay the forthcoming issuance of the Mandate pending its review of the Opinion.

ARGUMENT

Courts deciding motions to stay a mandate weigh the following factors: (1) the likelihood that the Supreme Court will accept jurisdiction; (2) the likelihood that the movant will prevail on the merits in the Supreme Court; (3) the likelihood of harm if the stay is not granted; and (4) the likelihood that the harm will be irreparable in the absence of a stay. *See State v. Miyasato*, 805 So. 2d 818, 825 (Fla. 2d DCA 2001). No one factor carries more weight than another, and one or two especially strong factors may counterbalance weak factors. *See id.* at 826 (staying the mandate where harm to respondent was minimal and risks to movant were significant, even though the chance that movant would prevail was small). Moreover, where, as here, there is a certified conflict between the district courts, this Court has often stayed mandates that have issued below. *See Planned Parenthood of Greater Orlando, Inc. v. MMB Props*., 211 So. 3d 918, 924 (Fla. 2017) (noting that the Court granted a motion to stay a mandate, after the Fifth DCA denied to stay issuance of the mandate, because petitioner "sought discretionary jurisdiction in this Court based on the acknowledge conflict" between

the Third, Fourth, and Fifth DCAs); *State v. Roberts*, 661 So. 2d 821, 821, 822 (Fla. 1995) (granting motion to stay an issued mandate of a district court where the Court's discretionary jurisdiction was "predicated upon conflict of decisions" and directing "the district court of appeal to withdraw its mandate pending consideration of the notice to invoke this Court's discretionary jurisdiction"). As shown below, the relevant factors weigh strongly in favor of granting this Motion and staying the Mandate.

I. THIS COURT IS LIKELY TO ACCEPT JURISDICTION

As noted above, American Capital has sought review of the Second DCA's Opinion because it expressly and directly conflicts with decisions of the Fourth DCA, *see Demetrescu*, 137 So. 3d at 503, *Corridori*, 28 So. 3d at 131, *Mich. Condo.*, 46 So. 3d at 178, and in fact the Opinion certified conflict with those decisions (Op. 9). The Opinion held that a trial court may compel appraisal even when an insurer wholly denies coverage, while the Fourth DCA precludes appraisal when there is a pending coverage dispute. *Compare* Op. at 5, 7-8, *with Demetrescu*, 137 So. 3d at 503, *Corridori*, 28 So. 3d at 131, *and Mich. Condo.*, 46 So. 3d at 178. The Second and Fourth DCAs also conflict in their interpretation of this Court's opinion in *Johnson v. Nationwide*. The Fourth DCA opinions interpret *Johnson* as requiring a court to determine coverage before compelling appraisal,

but the Opinion does not. *See Demetrescu*, 137 So. 3d at 503; *Corridori*, 28 So. 3d at 131; *Mich. Condo.*, 46 So. 3d at 178; Op. at 5.

In light of the certified conflict, this Court is likely to accept jurisdiction. *See, e.g.*, *Banks v. Jones*, 232 So. 3d 963, 965 (Fla. 2017) (exercising discretionary jurisdiction where the Court's "determination of the certified conflict is necessary for guidance to our trial and appellate courts"); *E.A.R. v. State*, 4 So. 3d 614, 616 (Fla. 2009) (exercising discretionary jurisdiction "to resolve this inter-district impasse").

II. AMERICAN CAPITAL IS LIKELY TO SUCCEED ON THE MERITS

In the Opinion, the Second DCA concluded that this Court's *Johnson v. Nationwide* opinion "did not hold that the trial court had to resolve coverage issues *before* compelling appraisal" (Op. 5) (emphasis in original). The Second DCA held that it was "preferable" to "leav[e] the order in which the issues of damages and coverage are to be determined . . . to the discretion of the trial court" (Op. 6-7) (internal quotation marks and citation omitted). In *Johnson*, however, this Court made clear that where, as here, an insurer "*wholly* denies that there is a covered loss," a court cannot compel appraisal. 828 So. 2d at 1022 (emphasis added). In other words, "appraisal is premature where there is a disputed issue of fact regarding coverage and where the trial court fails to 'resolve this dispute of fact with competent evidence to support its determination of coverage.'" *Demetrescu*,

137 So. 3d at 502 (quoting *Corridori*, 28 So. 3d at 131). "This is because a finding of liability necessarily precedes a determination of damages." *Id.*

In applying *Johnson*, both the Third and Fourth DCAs have held that—where an insurer has wholly denied coverage for the claim—appraisal is precluded until the Court has resolved all coverage disputes. *See Corzo v. Am. Superior Ins. Co.*, 847 So. 2d 584, 585 (Fla. 3d DCA 2003) (affirming the trial court's refusal to send a claim to appraisal, and holding that "where, as here, the claim has been denied in its entirety on the ground that it is not covered by the insurance policy, the issue of coverage is one for the court, not for the appraisers"); *Corridori*, 28 So. 3d at 131 (reversing an order compelling appraisal notwithstanding the insurer's denial of the claim, and holding that "[i]ssues of coverage are 'for judicial determination by a court,' not the appraisal panel"); *see also State Firm Fire & Cas. Co. v. Wingate*, 604 So. 2d 578, 579 (Fla. 4th DCA 1992) (reversing a non-final order denying the insurer's motion to stay an appraisal where the insurer had "den[ied] all payment . . . and voided the insurance policy"). Indeed, the Opinion is the *only* Florida DCA opinion after *Johnson* that adopts a dual-track approach where an insurer has *wholly* denied coverage for the claim.

Here, American Capital denied the insured's entire claim (Op. 2). Thus, the court cannot compel appraisal. *See Johnson*, 828 So. 2d at 1022; *Corzo*, 847 So. 2d at 585; *Corridori*, 28 So. 3d at 131. There is no discretion to allow the case

to proceed on a dual-track and decide the coverage issue after appraisal (*see* Op. 7 (citing *Sunshine State Ins. Co. v. Rawlins*, 34 So. 3d 753, 754 (Fla. 3d DCA 2010)). Such discretion is limited to cases in which the insurer has conceded *some* coverage. *See, e.g.*, *Rawlins*, 34 So. 3d at 754 (Because "the insurer twice admitted there was a loss," "the matter is . . . ripe for appraisal" but "the order in which the issues of damages and coverage are to be determined . . . is left to the discretion of the trial court."). This is not such a case. Accordingly, American Capital is likely to succeed on appeal.

III. AMERICAN CAPITAL WILL BE IRREPARABLY HARMED IF THE MANDATE IS NOT STAYED, BUT A STAY WILL NOT PREJUDICE LEEWARD BAY

American Capital would sustain significant harm without a stay by proceeding to an appraisal on a claim that it maintains is not covered and is tainted by misrepresentations. A stay would avoid the potentially needless expenditure of resources on an appraisal that may be worthless if the Court ultimately reverses the Opinion and holds that appraisal is precluded when there is a pending coverage dispute.

Moreover, American Capital's defense is not just that the loss is not covered under the terms of the policy, but rather that Leeway Bay materially misrepresented certain facts resulting in an overinflated claim (Op. 2). The appraisal panel will be limited to assessing the damage at the time of the appraisal

and cannot consider evidence of Leeward Bay's misrepresentations, concealments or false statements—in other words, the appraisers will have to review the claim with blinders on. That assessment is useless if it is based on or affected by false or inflated claims.

Additionally, the result of an appraisal is binding on American Capital no matter how inflated. *See, e.g.*, *Citizens Prop. Ins. Corp. v. River Manor Condo. Ass'n*, 125 So. 3d 846, 854 (Fla. 4th DCA 2013) (rejecting the insurer's assertion that there was duplication in the appraisal award because it "raise[d] an issue directly related to the 'amount of loss' sustained to the particular property—an issue solely within the province of the appraisers"). Proceeding to an appraisal under these circumstances would almost certainly harm American Capital.

Conversely, a brief stay pending this Court's review will not prejudice Leeward Bay because appraisal will still be available to Leeward Bay after the Court resolves the legal issue presented by this case. In fact, Leeward Bay would also benefit from not wasting further resources on an appraisal until this Court decides whether it should proceed. *See Miyasato*, 805 So. 2d at 826 (granting a stay of the mandate after holding that, even though the movant's "chances of victory are small, the harm to [respondent] caused by a stay is minimal and the risks to the [movant] if no stay is granted are significant"). Without a stay, however, American Capital would be compelled to participate in an appraisal

process it contends is void under the policy.

CONCLUSION

For the reasons stated above, this Court should enter a stay of the Mandate pending this Court's review of the case.

RULE 9.300(a) CERTIFICATION

Counsel for Petitioner have consulted with counsel for Respondent, who have stated that they do not consent to this Motion.

Dated: December 16, 2020

Respectfully submitted,

/s/ Raoul G. Cantero

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the font requirement of Florida Rule of Appellate Procedure 9.210(a)(2) and is submitted in Times New Roman 14-point font.

By: */s/ Raoul G. Cantero*
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CERTIFICATE OF SERVICE

I certify that a copy of this brief and its appendix were served by e-mail on December 16, 2020 to all counsel on the following:

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EXHIBIT A

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

AMERICAN CAPITAL ASSURANCE COPORATION, Appellant, v. LEEWARD BAY AT TARPON BAY CONDOMINIUM ASSOCIATION, INC. Appellee.	)	Case No. 2D20-165

Opinion filed November 4, 2020.

Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit Court for Collier County; Elizabeth V. Krier, Judge.

Patrick E. Betar, Evelyn M. Merchant, and Andrew S. Genden of Berk, Merchant & Sims, PLC, for Appellant.

Cary J. Goggin and Amanda Broadwell of Goede, Adamczyk, DeBoest & Cross, PLLC, Naples, for Appellee.

LaROSE, Judge.

American Capital Assurance Corporation appeals a nonfinal order compelling appraisal and staying the proceedings in favor of Leeward Bay at Tarpon Bay Condominium Association, Inc. We have jurisdiction. See Fla. R. App. P. 9.130(a)(3)(C)(iv). Because the gravamen of American Capital's defense was amount of loss, not coverage, we affirm.

I. Background

American Capital insured Leeward Bay's thirty-four buildings. After Hurricane Irma damaged its buildings, Leeward Bay filed a claim under the policy. American Capital agreed that approximately $76,000 of the loss was covered and issued payment. Leeward Bay subsequently submitted a proof of loss for $8,135,118 and requested an appraisal under the policy. The next month, Leeward Bay sued American Capital for breach of contract and moved to stay and compel appraisal. In response, American Capital alleged that the policy was void. It denied the claim, allegedly, because Leeward Bay overinflated its claim, thus voiding the policy because of fraud.

At the nonevidentiary hearing on the motion, American Capital reasserted its position that Leeward Bay's claim was void because Leeward Bay "falsely inflated the claim well beyond its actual value which constitutes an intentional misrepresentation and/or concealment of fact." American Capital contended that Leeward Bay included "things in their estimate that shouldn't have been included."

The trial court found that the case was "a dispute as to scope of loss [or amount] not whether there is coverage," and granted Leeward Bay's motion. In its written order, the trial court directed the appraiser to "itemize each category and component of damage appraised, the cause of damage, as well as costs thereof."

II. Analysis

American Capital argues that appraisal was premature because it denied Leeward Bay's claim was covered because of fraud. It asserts that the trial court should have resolved the coverage dispute—whether Leeward Bay voided the policy by

overinflating its claim—before any appraisal because "there is no appraisable issue until and unless a trial court determines there is a covered loss to appraise."[1]

Leeward Bay contends that American Capital cannot avoid appraisal by claiming fraud after it previously admitted coverage. Leeward Bay also argues that the trial court was well within its discretion to resolve the appraisal issue first because appraisals conserve judicial resources, the coverage dispute may be preserved for later determination, and the appraisal is necessary to determine whether there was fraud. In reply, American Capital maintains that the trial court's discretion exists only where the coverage dispute pertains to part of the claim, not the whole claim.

On orders compelling appraisal, we review the trial court's factual findings for competent substantial evidence. Fla. Ins. Guar. Ass'n v. Hunnewell, 173 So. 3d 988, 991 (Fla. 2d DCA 2015). "We review the trial court's application of the law to the facts de novo." Kennedy v. First Protective Ins. Co., 271 So. 3d 106, 107 (Fla. 3d DCA 2019) (citing Fla. Ins. Guar. Ass'n v. Lustre, 163 So. 3d 624, 628 (Fla. 2d DCA 2015)).

Initially, "[b]efore a [trial] court can compel appraisal under an insurance policy, it must make a preliminary determination as to whether the demand for appraisal is ripe." Citizens Prop. Ins. Corp. v. Admiralty House, Inc., 66 So. 3d 342, 344 (Fla. 2d DCA 2011) (citing Citizens Prop. Ins. Corp. v. Mango Hill Condo. Ass'n 12 Inc., 54 So. 3d 578, 581 (Fla. 3d DCA 2011)). A demand is ripe where postloss conditions are met, "the insurer has a reasonable opportunity to investigate and adjust the claim," and there is a disagreement regarding the value of the property or the amount of loss. Id. at 344

[1]American Capital also asserts that the trial court erroneously ruled "on the merits of the misrepresentation defense without a proper presentation of facts and evidence." American Capital did not request an evidentiary hearing below, and the trial court made no such ruling.

(quoting Citizens Prop. Ins. Corp. v. Galeria Vilas Condo Ass'n, 48 So. 3d 188, 191 (Fla. 3d DCA 2010)); see also State Farm Fla. Ins. Co. v. Hernandez, 172 So. 3d 473, 476-77 (Fla. 3d DCA 2015) ("The law in this district is clear and has been for nearly twenty years: the party seeking appraisal must comply with all post-loss obligations before the right to appraisal can be invoked under the contract.").

American Capital does not claim that Leeward Bay failed to satisfy any postloss conditions. American Capital's position at the hearing confirmed that it disputed the amount of loss. Thus, Leeward Bay's demand for appraisal was ripe. Cf. Admiralty House, 66 So. 3d at 344 (reversing order compelling appraisal because demand for appraisal was not ripe where insurer alleged that insured failed to comply with postloss duties); Sunshine State Ins. Co. v. Rawlins, 34 So. 3d 753, 754 (Fla. 3d DCA 2010) (holding that the matter was ripe for appraisal where "the insurer twice admitted there was a loss" and raised noncausation defenses); Corzo v. Am. Superior Ins. Co., 847 So. 2d 584, 585 (Fla. 3d DCA 2003) (holding that demand for appraisal was premature where insured had not yet filed suit on the policy and the insurer denied the entire claim based on lack of coverage and did not dispute the amount).

We must now assess whether the trial court erred in compelling appraisal before resolving any coverage dispute. Cf. Admiralty House, 66 So. 3d at 344 (recognizing that after determining the ripeness of a demand for appraisal, the next step was to determine the order in which to resolve appraisal and coverage issues). Undisputedly, coverage issues are judicial questions for the court; amount-of-loss issues are questions for appraisers. Johnson v. Nationwide Mut. Ins. Co., 828 So. 2d 1021, 1025 (Fla. 2002); see also Gonzalez v. State Farm Fire & Cas. Co., 805 So. 2d 814, 816 (Fla. 3d DCA 2000) ("[W]hen the insurer admits that there is a covered loss,

but there is a disagreement on the amount of loss, it is for the appraisers to arrive at the amount to be paid." (citing State Farm Fire & Cas. Co. v. Licea, 685 So. 2d 1285, 1288 (Fla. 1996))).

> Thus, where there is a demand for an appraisal under the policy, the only "defenses" which remain for the insurer to assert are that there is no coverage under the policy for the loss as a whole or that there has been a violation of the usual policy conditions such as fraud, lack of notice, and failure to cooperate.

Licea, 685 So. 2d at 1288.

But must the trial court always resolve coverage issues before compelling appraisal where the insurer denies coverage? American Capital asserts that the supreme court in Johnson "held that the [trial] court must determine whether there was a covered loss first." This is incorrect. The dispositive issue in Johnson was "whether causation [was] a coverage question for the court or an amount of loss question for the appraisal panel when the insurer wholly denie[d] that there [was] a covered loss." Johnson, 828 So. 2d at 1022. Johnson did not hold that the trial court had to resolve coverage issues before compelling appraisal. Rather, it held that appraisers may not determine what caused the damage "when an insurer wholly denies that there is a covered loss" because causation is exclusively a judicial question. Id. at 1022-23, 1026. Causation is only "an amount-of-loss question for the appraisal panel when an insurer admits that there is covered loss, the amount of which is disputed." Id. at 1022; see also Freeman v. Am. Integrity Ins. Co. of Fla., 180 So. 3d 1203, 1208 (Fla. 1st DCA 2015) ("While courts are exclusively charged with determining issues of coverage, appraisers are charged with determining the amount of loss when an insurer admits to a covered loss and the parties disagree regarding the amount of the loss."); Citizens Prop.

Ins. Corp. v. Mango Hill #6 Condo. Ass'n, 117 So. 3d 1226, 1227 n.1 (Fla. 3d DCA 2013) (" 'Appraisal award' is really a misnomer because the appraisal panel only determines the amount of loss, not an insured's entitlement to any damages, prominently including coverage issues such as whether the loss falls within the insuring clause of the policy, and whether the loss was caused by a covered peril.").

The district courts have yet to reach a consensus regarding the order in which the trial court should resolve appraisal and coverage issues. The Third District, for example, uses the dual-track approach, leaving "the order in which the issues of damages and coverage are to be determined . . . to the discretion of the trial court." Rawlins, 34 So. 3d at 754. The trial court may compel an appraisal on the dual-track basis, "while preserving all of [the insurer's] rights to contest coverage as a matter of law." See id. at 755. The Third District reasons that the dual-track approach is necessary to avoid any "adverse effects on the expeditious, out of court disposition of litigation" and to "save[] 'judicial resources which might otherwise be required in resolving the factual and legal issues involved in the [coverage issue] by a relatively swift and informal decision by the appraisers as to the amount of the loss.' " Id. (second alteration in original) (quoting Paradise Plaza Condo. Ass'n v. Reinsurance Corp. of N.Y., 685 So. 2d 937, 941 (Fla. 3d DCA 1996) (en banc)). In exercising its discretion, the trial court may consider factors such as "the costs involved and the relative importance and viability of the damages and the coverage issues, respectively." Paradise Plaza Condo. Ass'n, 685 So. 2d at 941.

In contrast, the Fourth District has "held that the trial court must resolve all underlying coverage disputes prior to ordering an appraisal" where the insurer wholly denies coverage. Citizens Prop. Ins. Corp. v. Demetrescu, 137 So. 3d 500, 502 (Fla.

4th DCA 2014); see also Citizens Prop. Ins. Corp. v. Mich. Condo. Ass'n, 46 So. 3d 177, 178 (Fla. 4th DCA 2010); Sunshine State Ins. Co. v. Corridori, 28 So. 3d 129, 131 (Fla. 4th DCA 2010). The Fourth District eschews the dual-track approach. Mich. Condo. Ass'n, 46 So. 3d at 178. It reasoned "that '[a] finding of liability necessarily precedes a determination of damages,' " and certified conflict with Rawlins. Mich. Condo. Ass'n, 46 So. 3d at 178 (alteration in original) (quoting Engle v. Liggett Grp., Inc., 945 So. 2d 1246, 1262-63 (Fla. 2006)).

We favorably noted the Third District's dual-track approach in Admiralty House, but the reference was dicta. See 66 So. 3d at 344 ("We note that '[o]nce the trial court determines that a demand for appraisal is ripe, the court has the discretion to control the order in which an appraisal and coverage determinations proceed.' " (alteration in original) (quoting Galeria Villas Condo. Ass'n, 48 So. 3d at 191-92)).

We now join the Third District and adopt the dual-track approach because the specific facts of this case demonstrate why it is preferable. Notably, American Capital initially conceded coverage. It then claimed fraud when it disagreed with Leeward Bay's allegedly overstated estimate of its loss. It seems clear to us that this case necessarily involves the amount of loss; any coverage dispute is intertwined with the amount of loss. The appraisal would likely assist the trial court when it later determines whether Leeward Bay fraudulently inflated its claim. The dual-track approach is not only judicially efficient, see Rawlins, 34 So. 3d at 755, but it may also be necessary where the findings in the appraisal are interconnected to the trial court's finding of liability.

III. Conclusion

The trial court acted within its discretion to compel appraisal. Cf. Rawlins, 34 So. 3d at 754-55. Thus, we affirm. Because the trial court directed the appraiser to specify the cause of each item of damage, we emphasize that the trial court must make the ultimate determination on any coverage disputes.[2] See Johnson, 828 So. 2d at 1022-23, 1026; Gonzalez, 805 So. 2d at 815. The appraisal addresses the amount of loss. See Freeman, 180 So. 3d at 1208; Mango Hill #6 Condo. Ass'n, 117 So. 3d at 1227 n.1; see, e.g., Grove Towers Condo. Ass'n v. Lexington Ins. Co., No. 19-24199-CIV, 2020 WL 4561599, at *2 (S.D. Fla. June 9, 2020) ("Consequently, the question of what repairs are needed to restore a property is a question relating to the amount of loss and not coverage, which is in the province of the court." (citing Baldwin Realty Grp., Inc. v. Scottsdale Ins. Co., No. 6:18-cv-785-Orl-41DCI, 2018 U.S. Dist. LEXIS 181709, at *8 (M.D. Fla. Sep. 6, 2018))), report and recommendation adopted, No. 19-24199-CIV, 2020 WL 4561600 (S.D. Fla. July 9, 2020).

Our disposition is without prejudice to American Capital's right to contest coverage as a matter of law and continue litigating its coverage defense after the appraisal. See Am. Coastal Ins. Co. v. Residences at Pelican Isle Condo. Ass'n, 291 So. 3d 1003, 1003 (Fla. 2d DCA 2020) (citing Liberty Am. Ins. v. Kennedy, 890 So. 2d 539, 541-42 (Fla. 2d DCA 2005), for the proposition "that submission of claim to appraisal does not foreclose insurer from challenging scope of coverage").

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[2]We note that the trial court permissibly directed the appraiser to itemize each type of damage. See Fla. Ins. Guar. Ass'n v. Olympus Ass'n, 34 So. 3d 791, 796 n.1 (Fla. 4th DCA 2010) ("When an appraiser uses a line-item appraisal form, as was done here, 'a court can readily identify any coverage issues that arise during the course of appraisal and resolve these without having to try and decipher what value the appraiser assigned for a particular type of damage.' " (quoting Bonafonte v. Lexington Ins. Co., No. 08-21062-CIV, 2008 WL 2705437, at *2 (S.D. Fla. July 9, 2008))).

Finally, we certify conflict with the Fourth District's opinions in Demetrescu, 137 So. 3d 502-03, Michigan Condo. Ass'n, 46 So. 3d at 178, and Corridori, 28 So. 3d at 131, to the extent that they hold the trial court must always resolve coverage disputes prior to compelling an appraisal.

Affirmed; conflict certified.

KHOUZAM, C.J., and SLEET, JJ., Concur.