DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

HERITAGE PROPERTY & CASUALTY INSURANCE COMPANY,
Appellant,

v.

WELLINGTON PLACE HOA, INC.,
Appellee.

No. 4D2022-2749

[September 13, 2023]

Appeal of a nonfinal order from the County Court for the Fifteenth Judicial Circuit, Palm Beach County; Gerard Joseph Curley, Judge; L.T. Case No. 502022CA001822.

Jeffrey A. Rubinton and Jesus Goatache of Rubinton Simms, P.A., Hollywood, and Kara Rockenbach Link and David A. Noel of Link & Rockenbach, P.A., West Palm Beach, for appellant.

Amanda Broadwell and Jessica Rodriguez of Goede, Deboest & Cross, PLLC, Naples, for appellee.

MAY, J.

How to categorize insurance claims for the purpose of determining ripeness for appraisal is questioned in this appeal. An insurer appeals an order granting the insured's motion to stay litigation and compel an appraisal. It argues the trial court erred in granting the stay and compelling the appraisal because the insurer had not yet determined coverage on the insured's additional claims after the insurer had accepted coverage on the initial claim. We disagree and affirm.

- ***The Facts***

The insured (a homeowner's association) had a commercial property insurance policy with the insurer, which was in effect from June 2017 to June 2018.[1] In September 2017, after Hurricane Irma made landfall, the

[1] Two policy provisions are relevant. First, an appraisal provision allowing either party to demand an appraisal in the event they disagree as to "the amount of

insured reported roof damage to the insurer and received a claim number: H2598.

In November 2017, the insurer sent the insured a letter regarding claim number H2598. The insurer determined the roof damage was caused by Hurricane Irma, "for which the policy provides coverage," but stated it would not be issuing payment because its adjuster had determined the amount of loss was less than the deductible. The attached estimate's cover letter stated:

> The represented values within this estimate do not constitute a settlement of your claim . . . . No supplemental payment will be considered without the prior approval of [the insurer]. If your contractor's estimate is greater or additional damages are found, please contact us prior to signing any contracts or proceeding with the work.

The insured hired its own adjuster in June 2018, and later retained a claims consulting company. In September 2019, the claims consulting company sent a letter to the insurer, seeking an extension of the policy's two-year time limit to complete repairs. The letter indicated the claim was still in dispute, and the insurer had not yet paid sufficient funds to allow the necessary repairs to be made. The insurer responded, referencing the initial claim number. It attached a "revised" estimate and asked the insured to provide its adjuster's estimate and supporting documentation "so we can address any disputes."

In October 2019, the insurer sent a letter informing the insured it had assigned an independent adjuster to reinspect the property. The letter again referenced the initial claim number. The record indicates the insurer then reinspected the property on three occasions.

In April 2020, the insured submitted its adjuster's estimate to the insurer. The amount of loss was estimated at more than $6 million,

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loss." Second, a notice provision (as modified by a "changes" rider) requiring any claim, "supplemental" claim, or "reopened" claim for loss caused by a hurricane to be reported within three years after the hurricane makes landfall. The notice provision defines a "supplemental" or "reopened" claim as "an additional claim for recovery from us for losses from the same hurricane . . . which we have previously adjusted pursuant to the initial claim." This definition is consistent with the version of section 627.70132, Florida Statutes (2016), in effect when the policy was executed.

including, for the first time, the cost to replace all the windows and sliding glass doors.

Between August 2020 and October 2021, the insurer conducted examinations under oath of the insured's representatives. The notices for those examinations referred to the initial claim number.

In October or November 2021, the insured demanded appraisal. The record does not indicate the insurer responded. In February 2022, the insured filed suit for breach of contract.

In April 2022, the insured moved to stay the litigation and compel appraisal. It argued the claim was ripe for appraisal because all post-loss conditions had been met, and the insurer had accepted coverage and been given a reasonable opportunity to investigate and adjust the claim.

The insurer responded that the insured's April 2020 submission of its adjuster's estimate for damages to the windows and doors constituted a "supplemental" damage claim, not ripe for appraisal, because the insurer had yet to determine coverage. The insurer would later argue the insured's September 2019 letter seeking payment for additional roof damage constituted a "reopened" claim, which was not ripe for appraisal for the same reason.

The insured's reply argued it had a single claim for damage caused by Hurricane Irma, which the insurer admitted was a covered loss. The insured argued the claim was still open for adjustment when the insured had sought payment for additional roof damage and replacement of the windows and doors. It pointed out both parties had continued to investigate the amount of loss through late 2021, and the insurer had never settled or closed the initial claim.

The insured also pointed out the insurer's correspondence had always referred to a singular "claim," with the initial claim number even after the insured had submitted its adjuster's estimate in April 2020. The insured argued the whole claim was ripe for appraisal because the insurer had admitted there was a covered loss, and the parties' disagreement as to the "reopened" and "supplemental" claims was a dispute as to the "amount of loss."

The trial court held a brief evidentiary hearing. The insured acknowledged it had initially reported roof damage and had later sought payment for additional roof damage and damage to the windows and doors.

But the initial claim had never been finalized or settled because the insured had disputed the insurer's determination of the "amount of loss."

The insurer responded no "amount-of-loss" issue existed because the insured had never disputed the cost to repair the initially reported roof damage. It maintained the September 2019 letter constituted a "reopened" claim for additional roof damage and the April 2020 submission constituted a "supplemental" claim for replacement of windows and doors. The insurer argued the insured was not entitled to appraisal of either claim, because it had not proven the insurer had accepted coverage for those claims.

The trial court granted the insured's motion, stayed the litigation, and compelled appraisal. The trial court ruled the insured's claim was ripe for appraisal as to the "amount of loss" because the insurer had admitted a covered loss had occurred and had been given sufficient information to assess the claim.

From this order, the insurer appeals.

- ***The Analysis***

We review de novo an order compelling appraisal. *Am. Coastal Ins. Co. v. Hanson's Landing Ass'n, Inc.*, 331 So. 3d 199, 202 (Fla. 4th DCA 2021).

When an insurer "wholly denies" coverage, the trial court must resolve the coverage dispute before ordering appraisal. *Id.* (quoting *Johnson v. Nationwide Mut. Ins. Co.*, 828 So. 2d 1021, 1026–27 (Fla. 2002)). When an insurer admits a covered loss has occurred, however, appraisal is appropriate to resolve any dispute as to the amount of the loss, including disputes as to how much of the claimed damage was caused by the covered loss. *Id.* (citations omitted).

On appeal, the insurer continues to maintain the insured's September 2019 letter constituted a "reopened" claim for additional roof damage, and the April 2020 submission of its adjuster's estimate constituted a "supplemental" claim for damage to the windows and doors. The insurer argues that appraisal is premature as to both the "reopened" and "supplemental" claims, either because it has not yet decided coverage or because its failure to decide operated as a denial.

The insured maintains the parties' dispute regarding the additional roof damage and the damage to the windows and doors is an "amount of loss"

or causation dispute on the initial claim, which is ripe for appraisal because the insurer admitted coverage.

We agree with the insured. The policy in this case requires a "reopened" or "supplemental" claim for hurricane damage to be reported to the insurer within three years after a hurricane makes landfall. But the policy is silent as to whether a new coverage decision is required for a "reopened" or "supplemental" claim where the insurer has already admitted coverage for the initial claim.

The insurer relies primarily on *American Coastal Insurance Co. v. Ironwood, Inc.*, 330 So. 3d 570 (Fla. 2d DCA 2021), to argue it is entitled to investigate the insured's "reopened" and "supplemental" claims separately from the insured's initial claim and make a separate coverage decision before those claims become ripe for appraisal.

In *Ironwood*, the insured submitted a claim for roof damage caused by Hurricane Irma. *Id.* at 571. The insurer accepted coverage, adjusted the claim, and issued several payments. *Id.* The insured did not dispute the resolution of the initial claim, but later submitted an additional claim for damage to its windows and doors. *Id.* The insured invoked its right to an appraisal as to the windows-and-doors claim before the insurer decided whether that claim was covered. *Id.*

The insured later filed suit and moved to compel appraisal; the trial court granted the motion. *Id.* at 571–72. The Second District reversed, holding the windows-and-doors claim was not ripe for appraisal because the insurer did not have a sufficient opportunity to investigate the claim and decide whether that claim was covered. *Id.* at 573.

The Second District noted the policy, like the policy at issue in this case, defined a "supplemental" claim as an "additional claim for recovery from [the insurer] for losses from the same hurricane or windstorm which [the insurer] [has] previously adjusted pursuant to the initial claim." *Id.* Applying that definition, the Second District concluded the windows-and-doors claim was "supplemental" because the damage was caused by the same hurricane and the insurer had previously adjusted the initial roof damage claim. *Id.* As such, the claim required a separate coverage decision before it became ripe for appraisal. *Id.*

The insurer also cites *Heritage Property & Casualty Insurance Co. v. Veranda I at Heritage Links Ass'n, Inc.*, 334 So. 3d 373 (Fla. 2d DCA 2022). There, the insurer accepted coverage and agreed to pay the insured's initial

claim for roof damage, but denied coverage for the insured's later claim for damage to windows and doors. *Id.* at 374–75.

The trial court granted the insured's motion and compelled appraisal of the windows-and-doors claim. *Id.* at 374. The Second District reversed, applying *Ironwood*. *Id.* at 376–77. Once again, the Second District held the windows-and-doors claim was a "supplemental" claim under the policy's definition because the insurer had previously adjusted the roof damage claim arising from the same hurricane. *Id.* at 376. As such, the insurer was entitled to consider coverage separately from the initial claim. *Id.* at 376–77.

Ironwood and *Veranda I* are distinguishable. In each case, the initial claim was settled before the insured submitted additional claims. Here, however, the insured's initial claim was never settled or closed after the insurer admitted coverage.

The insurer specifically advised the insured that its initial estimate did not constitute a settlement of the claim and indicated that supplemental payments could be made if the insured submitted a higher estimate or discovered "additional damages." The insured did discover "additional damages" and submitted a higher estimate to the insurer as instructed. Then, both parties continued to investigate the "amount of loss" of the initial claim until the insured demanded appraisal in late 2021. *See Luciano v. United Prop. & Cas. Ins. Co.*, 156 So. 3d 1108, 1110 (Fla. 4th DCA 2015).

Our decision in *People's Trust Insurance Co. v. Tracey*, 251 So. 3d 931 (Fla. 4th DCA 2018), is instructive. There, the insureds reported damage to their home following a tornado. *Id.* at 932. The insurer accepted coverage for the loss "as a whole" but determined some of the claimed damages were not caused by the tornado and therefore not covered. *Id.*

The insureds later sued for breach of contract, and the insurer moved to compel appraisal. *Id.* at 933. The trial court ruled that appraisal was premature because of the unresolved coverage disputes. *Id.* We reversed and held that appraisal was appropriate because the insureds had "only one claim," and the insurer had not "wholly denied" coverage for that claim. *Id.* at 933–34.

In reaching that holding, we distinguished *Sunshine State Insurance Co. v. Corridori*, 28 So. 3d 129, 130–31 (Fla. 4th DCA 2010), where we held a factual issue existed as to whether the insurer had admitted coverage for a "supplemental" claim that was filed two years after the initial claim had

been paid and closed. *Tracey*, 251 So. 3d at 933–34 (distinguishing *Corridori* as a case involving "separate claims").

Here, like in *Tracey*, the insurer admitted coverage for the insured's loss as a whole and determined the initially reported roof damage was covered. *See id.* The claim was never settled and was still open when the insured subsequently reported additional roof damage and damage to its windows and doors. We have generally recognized that a subsequent claim should be treated as part of the initial claim if the insurer has accepted coverage for the initial claim and the claim has not been settled. *Compare Luciano*, 156 So. 3d at 1109–10 (treating subsequent claims as part of the initial claim where coverage accepted for initial claim and not settled or resolved), *with Corridori*, 28 So. 3d at 130–31 (treating subsequent claim as a "separate claim" where coverage accepted for initial claim but settled, resolved, or otherwise closed).

Like the insureds in *Tracey*, the insured in this case has only one claim, and because the insurer has not wholly denied coverage, any dispute as to whether the insurer is required to pay for all the reported damage is an "amount of loss" or causation dispute that must be resolved in appraisal. 251 So. 3d at 933–34; *see also Johnson*, 828 So. 2d at 1025; *Merrick Preserve Condo. Ass'n, Inc. v. Cypress Prop. & Cas. Ins. Co.*, 315 So. 3d 45, 50 (Fla. 4th DCA 2021).

In summary, the insured's claim is ripe for appraisal because the insurer admitted coverage for the initial claim, and the claim remained open for adjustment when the insured reported additional damage pursuant to the policy. The parties' disagreement as to whether the insurer is required to pay for the additional damage is an "amount-of-loss" issue for appraisal to resolve, not a coverage issue. We therefore affirm the order staying the litigation and compelling appraisal.

Affirmed.

WARNER and CONNER, JJ., concur.

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Not final until disposition of timely filed motion for rehearing.