

## [American Capital v. Leeward Bay](#)

Year: 2021

Court: Supreme Court Florida

Case Number: SC20-1766

In its brief, UP tackles the issue of appraisal provisions that are placed in policies to resolve disputes over the amount of loss. Traditionally, nothing in the policy dictates that issues of coverage must be determined prior to appraisal. However, American Capital's policy, and most modern property policies, recognizes a trial court's discretion to compel appraisal in advance of resolving all coverage issues. The fraud defense here is merely a dispute over the valuation and amount of the loss, which is subject to appraisal. Not all fraud defenses are the same. Some, like policy misrepresentation, truly concern coverage. Other fraud allegations, like those made by AmCap, concern the amount of loss. If AmCap's position were correct, any insurance company could avoid appraisal regarding the entire loss by claiming misrepresentation or fraud based on even a de minimis valuation dispute. This legal paradigm would leave the appraisal process in tatters and subject to manipulation by insurers. UP argues the following points to the court:

I. The Policy Requires That This Dispute Be Resolved by the Appraisal Process.

II. The Determination of Whether Appraisal Should Proceed Before an Insurer's Coverage Defense Should Be Left to the Informed Discretion of the Trial Courts.

III. The Misrepresentations Alleged by AMCAP Amount to Nothing More Than a Dispute as to the Amount and Scope of the Loss, Which the Appraisal Process is Designed to Resolve.

This brief was authored pro bono by Hugh Lumpkin, Matthew B. Weaver of Reed Smith, Michael J. Higer of Berger Singerman, Mark Boyle, Molly Chafe Brockmeyer, Alexander Brockmeyer, and E. Alysse Vautier of



Boyle, Leonard & Anderson, P.A.

---

The information presented in this publication is for general informational purposes and is not a substitute for legal advice. If you have a specific legal issue or problem, United Policyholders recommends that you consult with an attorney. Guidance on hiring professional help can be found in the "Find Help" section of [www.uphelp.org](http://www.uphelp.org). United Policyholders does not sell insurance or certify, endorse or warrant any of the insurance products, vendors, or professionals identified on our website.

Source: <https://uphelp.org/amicus-briefs/american-capital-v-leeward-bay/> Date: July 27, 2024