

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

DALE INGRAM,)	
)	Case No. 1:21-cv-75
<i>Plaintiff,</i>)	
)	Judge Travis R. McDonough
v.)	
)	Magistrate Judge Christopher H. Steger
STATE FARM FIRE & CASUALTY)	
COMPANY,)	
)	
<i>Defendant.</i>)	
)	

ORDER

Before the Court is Plaintiff Dale Ingram’s motion to compel Defendant State Farm Fire and Casualty Company (“State Farm”) to submit to a contractual appraisal process (Doc. 19). For the reasons below, the motion to compel appraisal is **GRANTED**.

I. BACKGROUND

On April 12, 2020, a severe storm hit Hamilton County, Tennessee. (Doc. 1, at 3.) Ingram’s property was in the path of the storm, and high winds and tornadic activity caused substantial damage to Ingram’s dwelling and to other structures. (*Id.*) Following the storm, Ingram filed claims pursuant to his State Farm home-insurance policy (“the Policy”). (*Id.*) State Farm acknowledged the Policy covered the damage and estimated the cost of repair as \$49,522.00. (*Id.*; Doc. 21, at 1.) Ingram, however, believed this amount was insufficient because an independent appraiser had determined a loss of \$203,055.68. (Doc. 21, at 2.) Ingram’s Policy provided, in relevant part:

4. Appraisal. If you [Ingram] and we [State Farm] fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.

(Doc. 21-2, at 29.) Consequently, Ingram's wife made a written demand on State Farm for contractual appraisal on December 10, 2020. (*Id.* at 4; Doc. 20, at 3.) On December 11, 2020, State Farm denied Ingram's wife's demand for appraisal, claiming that there were "disputes regarding covered damages." (Doc. 1, at 4.)

On April 4, 2021, Ingram filed the instant action against State Farm. (*Id.*) He asserts a single breach-of-contract claim, alleging that State Farm breached the Policy by: (1) refusing to pay the proper amounts under the Policy, (2) failing to pay additional amounts available under the Policy, and (3) failing to engage in the Policy's appraisal process. (*Id.* at 5.) On June 16, 2021, Ingram moved to compel State Farm to engage in the appraisal process. (Doc. 19.) The motion is now ripe for review.

II. ANALYSIS

Ingram argues that appraisal is mandatory because this dispute centers around the proper amount of loss. (Doc. 20, at 7–9.) State Farm, however, contends that there is a dispute about coverage and causation that precludes appraisal. (Doc. 21, at 6.)

The Court's analysis begins with the Policy's language. "In general, courts should construe insurance contracts in the same manner as any other contract." *Am. Just. Ins. Reciprocal v. Hutchinson*, 15 S.W.3d 811, 814 (Tenn. 2000). "The language of the policy must be taken and understood in its plain, ordinary, and popular sense." *Id.* (citing *Bob Pearsall Motors, Inc. v. Regal Chrysler-Plymouth, Inc.*, 521 S.W.2d 578, 580 (Tenn. 1975)). In Tennessee, the guiding principle of contract interpretation "is to ascertain and give effect to the intent of the parties." *Clark v. Sputniks, LLC*, 368 S.W.3d 431, 441 (Tenn. 2012).

The Policy explicitly provides for appraisal, and the provision is mandatory if invoked by one of the parties. The Policy states: "If you [Ingram] and we [State Farm] fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser." (Doc. 21-2, at 29.) Ingram's wife invoked the appraisal provision on December 10, 2020. (Doc. 1, at 4.) The provision is mandatory if invoked, as evidenced by the language "each *shall* select a competent, disinterested appraiser." (Doc. 21-2, at 29 (emphasis added).)

This type of appraisal provision is valid in Tennessee. *Harowitz v. Concordia Fire Ins. Co.*, 168 S.W. 163, 165 (Tenn. 1914). Courts "regularly compel appraisal pursuant to such provisions," even though these motions are not brought under any particular Federal Rules of Civil Procedure. *J. Wise Smith & Assocs., Inc. v. Nationwide Mut. Ins. Co.*, 925 F. Supp. 528, 530 (W.D. Tenn. 1995) (collecting cases); *see also Bard's Apparel Mfg., Inc. v. Bituminous Fire & Marine Ins. Co.*, 849 F.2d 245, 249 (6th Cir. 1988) (applying Tennessee law); *Glob. Aerospace, Inc. v. Phillips & Jordan, Inc.*, No. 3:15-CV-105-PLR-CCS, 2015 WL 5514627 (E.D. Tenn. Sept. 17, 2015); *Kush Enters., LLC v. Mass. Bay Ins. Co.*, No. 3:18-cv-492, slip op. at 2 (E.D. Tenn. Nov. 7, 2019) ("while Plaintiff did not cite a particular Federal Rule of Civil

Procedure, courts regularly compel appraisal pursuant to such provisions . . . the Court will not treat Plaintiff’s motion as one for summary judgment” (internal citation and quotation marks omitted)). Consequently, if there is a disputed amount of loss, State Farm must move forward with the Policy’s appraisal process.

State Farm seeks to avoid enforcement of the appraisal provision by claiming there is a dispute as to coverage, rather than loss. (Doc. 21, at 2.) It is true that “the object of appraisal in cases of casualty insurance is to quantify the monetary value of a property loss,” rather than to decide issues of coverage or causation. *Merrimack Mut. Fire Ins. Co. v. Batts*, 59 S.W.3d 142, 149 (Tenn. Ct. App. 2001). However, the parties do not dispute that Ingram’s damage is covered as a general matter—both parties concede that the Policy covers some damage, and State Farm has made partial payments for the damage—but rather the extent and the amount of the loss. (Doc. 21, at 2–3.) Ingram contends that there is additional loss that is eligible for coverage, while State Farm contends that this is an issue of scope of coverage. However, this dispute must necessarily be treated as one regarding the total amount of loss, rather than coverage, as State Farm has already conceded that at least *some* storm damage is covered. *See, e.g., Kush*, slip op. at 3 (“By contesting whether there is additional covered loss, however, Defendant necessarily disagrees with Plaintiff that the total amount of loss Plaintiff incurred includes any additional loss.”). To decide otherwise in this instance would allow insurance agencies to avoid appraisal by claiming there is a coverage issue, even when the dispute concerns additional amounts of loss. Consequently, the Court determines this dispute falls within the appraisal provision’s ambit.

Accordingly, in this case, it is proper to order appraisal. First, the parties consented to a mandatory appraisal provision in the Policy—a policy that State Farm wrote—and these provisions are enforceable in Tennessee. *See Harowitz*, 168 S.W. at 165. There is a dispute as

to the amount of loss and the Policy has been properly invoked. Further, judicial economy will be served by ordering appraisal now, rather than later in this litigation. Once the parties have determined the amount of loss, they can evaluate whether it is prudent to continue litigating, or whether settlement is warranted.

Finally, State Farm will not waive any of its coverage or causation contentions by engaging in appraisal, as these may be raised to the Court afterwards. “An appraiser’s authority is limited to the authority granted in the insurance policy or granted by some other express agreement of the parties.” *Merrimack*, 59 S.W.3d at 152. An “umpire’s determinations with regards to matters within the scope of authority granted to the umpire are binding on the parties and may not be challenged in court where the challenge is *only* based upon the umpire’s amount.” *Thomas v. Standard Fire Ins. Co.*, No. E2015-01224-COA-R3-CV, 2016 WL 638559, at *3 (Tenn. Ct. App. Feb. 17, 2016) (emphasis added). In the absence of an agreement to the contrary, authority to decide disputes of liability and coverage lies in the courts, and not with the appraisers. *Merrimack*, 59 S.W.3d at 153; *Harowitz*, 168 S.W. at 165; *see also Pear Tree Props., LLC v. Acuity*, No. 3:16-cv-00551, 2017 WL 3674845 (M.D. Tenn. Aug. 25, 2017). The Policy’s appraisal provision permits the appraisers and the umpire to decide the amount of loss, rather than issues of coverage or causation. (Doc. 21-2, at 29.) To that end, the appraisers in this case should take care to ensure that the appraisal is detailed and itemized. Following appraisal, the Court will be able to decide issues of coverage and causation regarding the losses that State Farm maintains are not covered by the Policy.

III. CONCLUSION

For the above reasons, Plaintiff Dale Ingram’s motion (Doc. 19) is **GRANTED** and the parties are **ORDERED** to engage in the contractual appraisal process.

SO ORDERED.

/s/ Travis R. McDonough

**TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE**