IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

LAURIE SMITH, Plaintiff, v. STATE FARM FIRE AND CASUALTY COMPANY, Defendant.	)	No. 1:21-cv-01076-JDB-jay

ORDER GRANTING MOTION TO COMPEL APPRAISAL

Before the Court is Plaintiff, Laurie Smith's ("Plaintiff") July 13, 2021, Motion to Compel Appraisal pursuant to Defendant, State Farm Fire and Casualty Company's, insurance policy ("Policy"). (Docket Entry "D.E" 16.) Plaintiff seeks appraisal of Plaintiff's insured home, damaged by a March 3, 2020, storm event, because an appraisal is consistent with the plain language of the provision and prevents needless and wasteful litigation on the issue of loss and value. (D.E. 16.) Defendant responds in opposition, contending that the only dispute concerns the scope of work to be performed, and, thus, the appraisal provision of the Policy is not triggered. (D.E. 22, PageID 124-25.) Alternatively, should the Court find that appraisal is appropriate, Defendant requests that the appraisal be limited to the scope of work prepared by State Farm. (*Id.*) For the reasons set out below, the Court **GRANTS** Plaintiff's motion.

"A federal court sitting in diversity applies the substantive law of the state in which it sits." *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 566 (6th Cir. 2001) (citing *Klaxon Co v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)). Tennessee follows the rule of *lex loci contractus*,

which presumes a contract is governed by the "law of the jurisdiction in which it was executed absent a contrary intent." *Carbon Processing & Reclamation, LLC v. Valero Mktg. & Supply Co.*, 823 F. Supp. 2d 786, 801 (W.D. Tenn. 2011) (citing *Se. Tex. Inns Inc. v. Prime Hosp. Corp.*, 462 F.3d 666, 672 (6th Cir. 2006 (applying Tennessee law); *Ohio Cas. Ins. Co v. Travelers Indem. Co.*, 493 S.W.2d 465, 467 (Tenn. 1973)). Here, *lex loci contractus* dictates that Tennessee substantive law should be applied because the contract was executed in Tennessee and there is no evidence of a contrary intent in the contract.

Under Tennessee law, insurance contracts are interpreted according to the same rules applicable to contracts in general. *Travelers Indem. Co. of Am. v. Moore & Assocs., Inc.*, 216 S.W.3d 302, 305-06 (Tenn. 2007) (citing *McKimm v. Bell*, 790 S.W.2d 526, 527 (Tenn. 1990)). As a result, an insurance contract "must be interpreted fairly and reasonably, giving the language its usual and ordinary meaning[,]" and "should be construed as a whole in a reasonable and logical manner." *Travelers Indem. Co. of Am.*, 216 S.W.3d at 306 (quoting *Naifeh v. Valley Forge Life Ins. Co.*, 204 S.W.3d 758, 768 (Tenn. 2006); *Standard Fire Ins. Co. v. Chester-O'Donley & Assocs., Inc*. 972 S.W.2d 1, 6 (Tenn. Ct. App. 1998)). "Under Tennessee law, an appraisal provision in an insurance policy is valid." *See Bard's Apparel Mfg. Inc. v. Bituminous Fire & Marin Ins. Co.*, 849 F.2d 245, 249 (6th Cir. 1988) (citing *Hickerson v. German-American Ins. Co.*, 96 Tenn. 193 (1896)). In addition, "[c]ourts regularly compel appraisal pursuant to such provisions." *J. Wise Smith & Assocs., Inc. v. Nationwide Mut. Ins. Co.*, 925 F. Supp. 528, 530 (W.D. Tenn. 1995) (citing *Middlesex Mut. Assurance Co v. Clinton*, 38 Conn. App. 555 (1995); *Childs v. State Farm Fire & Casualty Co.*, 899 F. Supp. 613 (S.D. Fla 1995)).

Here, the dispute hinges on the applicability of the policy's appraisal provision. The provision in question reads as follows:

> **Appraisal**
>
> If you and we fail to agree on the amount of the 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 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 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.

(Policy, D.E. 22-1, PageID 141.) The policy mandates appraisal when: (1) there is a dispute regarding the amount of the loss and (2) a written demand for appraisal is made. Neither party disputes Plaintiff made a written demand for an appraisal, meaning that the only issue the Court must decide is whether the parties disagree on the amount of loss.

Defendant contends the parties disagree only on the scope of covered loss, not the amount of loss. Specifically, Plaintiff claims there is residual damage to the buildings that has not, but should have been, covered, and Defendant asserts that there is no additional covered loss as there is no residual damage. "By contesting whether there is additional loss, however, [a Defendant] necessarily disagrees with [a Plaintiff] that the total amount of loss Plaintiff incurred includes any additional loss." *Kush Enters., LLC v. Mass. Bay Ins. Co.*, No. 3:18-cv-00492-CLC-DCP, J. Collier Opinion (D.E. 16-4). Additionally, "the plain language of the provision allows either party to demand appraisal when there is a disagreement on the amount of loss." *Id.* Here, as Defendant is contesting Plaintiff's assertion that additional loss should be covered, the total amount of loss is in dispute. Therefore, the Court finds that the criteria are satisfied and appraisal is appropriate.

The Court notes that this decision does not expand the scope of the appraisal process set out under the policy. 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 Mut. Ins. Co. v. Batts*, 59 S.W.3d 142, 152 (Tenn. Ct. App. 2001). Here, the provision does not allow the appraisers to make final determinations on the causation, scope, or liability under the policy, just the amount of the loss. In such a case, a "Defendant can still dispute those issues after the appraisal in complete. If the parties disagree on the issues after the appraisal process, the court will decide them." *Kush Enters., LLC v. Mass. Bay Ins. Co.*, No. 3:18-cv-00492-CLC-DCP, J. Collier Opinion (D.E. 16-4); *see also Merrimack Mut. Fire Ins. Co.*, 59 S.W.3d at 153.

Accordingly, the Court GRANTS Plaintiff's Motion to Compel Appraisal as follows:

1. The parties are **ORDERED** to select their respective appraisers **within ten (10) days** of this Order;
2. Upon selection, the two appraisers must promptly confer to appoint an umpire **within ten (10) days** of their appointment;
3. If an umpire cannot be agreed upon, the Court will appoint an umpire of its choosing upon request by either party; and
4. The appraisal panel must complete its appraisal **within ninety (90) days** of the umpire's appointment, including any decision by the umpire.

IT IS SO ORDERED on this 27th day of October.

s/Jon A. York
UNITED STATES MAGISTRATE JUDGE

ANY OBJECTIONS OR EXCEPTIONS TO THIS ORDER MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE ORDER. *SEE* U.S.C § 636(B)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FUTHER APPEAL.