

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DONALD BLACKWOOD, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. 4:23-CV-00780-
	§	ALM-AGD
AMERICAN ECONOMY INSURANCE	§	
COMPANY,	§	
	§	
Defendant.	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

The above-referenced case was referred to the undersigned United States Magistrate Judge for pre-trial purposes in accordance with 28 U.S.C. § 636. Pending before the court is Defendant American Economy Insurance Company’s (“Defendant”) Opposed Motion to Compel Appraisal and Abate Litigation Pending the Outcome of Appraisal (“Motion to Compel”) (Dkt. #19), filed on October 24, 2024. On November 17, 2024, the court ordered Plaintiffs Donald and Delois Blackwood (“Plaintiffs”) to respond to Defendant’s Motion to Compel, if desired, within 14 days of the entry of the Order (Dkt. #21). On November 22, 2024, Plaintiffs filed a Response in Opposition (Dkt. #24). Defendant’s Reply in Support was filed on December 2, 2024 (Dkt. #25). After considering the Motion to Compel, and all relevant filings, the court finds that Defendant’s Motion to Compel (Dkt. #19) should be **GRANTED**.

BACKGROUND

Plaintiffs originally filed this lawsuit in state court on March 17, 2023 (Dkt. #3). Defendant removed the lawsuit on August 30, 2023, based on diversity jurisdiction (Dkt. #1 at p. 1). Plaintiffs’ Complaint alleges winter storm damage to Plaintiffs’ residential property covered by an insurance

policy issued by Defendant that occurred in February 2021 (Dkt. #3 at p. 2). The Parties mediated the dispute on September 26, 2024 (Dkt. #19 at p. 4). Then, on October 4, 2024, Defendant invoked appraisal (Dkt. #19 at p. 1). On October 16, 2024, Plaintiffs indicated their opposition to engaging in the appraisal process (Dkt. #19 at p. 4). On October 24, 2024, Defendant filed its Opposed Motion to Compel Appraisal and Abate Litigation Pending the Outcome of Appraisal (Dkt. #19). The Motion to Compel is now fully briefed and ripe for consideration.

LEGAL STANDARD & ANALYSIS

Plaintiffs argue that Defendant waived its right to invoke appraisal (Dkt. #24 at p. 3), and Defendant denies waiver (Dkt. #19; Dkt. #25). Plaintiffs' opposition to appraisal is based on the argument that Defendant unreasonably delayed invocation of the appraisal process (Dkt. #24 at p. 3). In *In re Universal Underwriters of Texas Insurance Company*, 345 S.W.3d 404, 408 (Tex. 2011), the Texas Supreme Court stated that “while an unreasonable delay is a factor in finding waiver, reasonableness must be measured from the point of impasse.” “An impasse is not the same as a disagreement about the amount of loss,” but rather when “both parties [are] aware that further negotiations would be futile.” *Id.* at 408–09.

Defendant notes that it invoked the appraisal process eight days after mediation (Dkt. #19 at pp. 1, 4). Plaintiffs argue Defendant unreasonably delayed invocation of the appraisal process because litigation had already begun, and thus, Defendant had “acted consistently with the relinquishment of the appraisal right.” (Dkt. #24 at p. 3). As support, Plaintiffs allege that “[f]ederal removal, mediation, discovery, and motion practice have all been conducted in the interim.” (Dkt. #19 at p. 4). Plaintiffs also allege that they “hired and paid an expert to research, review, and opine on the amount of the damages.” (Dkt. #24 at p. 4).

A review of the docket shows that, at the time Plaintiffs filed their Response to Defendant’s Motion to Compel, no motions had been filed in the instant lawsuit other than agreed motions to extend deadlines—both of which were filed by Defendant (Dkt. #15; Dkt. #17). Additionally, Plaintiffs hired an expert to inspect their property in late 2021, over a year before they filed the instant lawsuit (Dkt. #24, Exhibit 3). Further, Defendant notes that no depositions had occurred prior to filing its Motion to Compel (Dkt. #19 at p. 4). Thus, the court finds that the “undue prejudice” Plaintiffs assert, (Dkt. #24 at p. 4), is either unfounded or not attributable to Defendant.

Furthermore, the Parties willingly entered into a contract with an appraisal provision that specifically contemplates invocation of the appraisal process during the pendency of a lawsuit (Dkt. #19, Exhibit 2). The appraisal provision states:

Any demand for appraisal must be made either within the contractual suit limitations period stated in this policy or during the pendency of a timely filed lawsuit related to the claimed loss. . . . If you or we timely demand an appraisal, then upon request made by either you or us for abatement of any suit for or involving the claimed loss, the suit shall be abated until after an appraisal award is made in accord with this appraisal clause.

(Dkt. #19, Exhibit 2 at p. 72). Outside the issue of waiver, neither party attacks the enforceability of the contractual appraisal provision. Therefore, the court finds that this valid contractual provision, which has not been waived, is enforceable. Defendant timely invoked its right to appraisal during the pendency of this lawsuit related to the claimed loss. Therefore, pursuant to the contract, the lawsuit should be abated until after an appraisal award is made according to the provisions of the contract.

CONCLUSION AND RECOMMENDATION

For the foregoing reasons, the court recommends that Defendant’s Motion to Compel Appraisal and Abate Litigation Pending the Outcome of Appraisal (Dkt. #19) should be **GRANTED**, and any remaining pending motions should be **DENIED AS MOOT**. The court

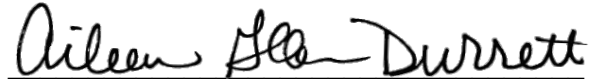
further recommends that the Parties should be **COMPELLED** to participate in appraisal in accordance with the contract and that the instant lawsuit and all future deadlines should be **ABATED** pending the outcome of the appraisal. The court also recommends that the Parties submit a joint status report to the court within ten (10) days of the completion of appraisal. The joint status report shall contain a jointly proposed amended scheduling order. Upon receipt of such, the undersigned shall reopen the lawsuit and reset the case on Chief Judge Mazzant's trial docket as necessary for final disposition. Finally, it is recommended that the Parties submit a Joint Status Report every sixty (60) days during the pendency of the appraisal process.

Within fourteen (14) days after service of the magistrate judge's report, any party must serve and file specific written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific, written objections will bar the party from appealing the unobjected-to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

IT IS SO ORDERED.

SIGNED this 1st day of May, 2025.


AILEEN GOLDMAN DURRETT
UNITED STATES MAGISTRATE JUDGE