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

JOHN PETROPOULOS, *et al.*	**§**	
	§	
v.	**§**	**NO. 4:23-CV-00500-ALM-BD**
	§	
SAFECO INSURANCE COMPANY OF INDIANA	**§**	
	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

In this diversity case, plaintiffs John and Shannan Petropoulos sued Safeco Insurance Company of Indiana for breach of contract, breach of the duty of good faith and fair dealing, and violations of the Texas Insurance Code and the Texas Deceptive Trade Practices Act ("DTPA") in connection with a homeowners' insurance claim that resulted in an appraisal award that the Petropouloses considered insufficient. Dkt. 7 (operative complaint); *see* 28 U.S.C. § 1332. The Petropouloses moved to vacate the appraisal award and to appoint a new umpire. Dkt. 23; *see* Dkt. 24 (response). Safeco moved for summary judgment. Dkt. 25; *see* Dkts. 26 (response), 27 (reply). The court will recommend that the Petropouloses' motion be denied and that Safeco's motion be granted.

BACKGROUND

I. Factual Background

The Petropouloses have a homeowners' insurance policy with Safeco. Dkt. 7 at 2. They allege that, in April 2021, a storm "caused widespread damage to homes located throughout north Texas." *Id.* According to the Petropouloses, the storm "resulted in direct physical damage" to their property, which they reported to Safeco to initiate an insurance claim. *Id.*; *see* Dkt. 25 at 3 (noting that the Petropouloses contacted Safeco in December 2021). They then retained a construction and roofing company to assess the damage. Dkt. 7 at 2.

Nearly a year after the storm, Safeco dispatched Roof Technical Services ("RTS") to conduct an inspection of the property with a representative of the Petropouloses' roofing company in attendance. *Id.* The Petropouloses allege that, while on site, the RTS representative "confirmed half-moons all over the roof and agreed that there was hail damage on the roof." *Id.* at 3. According to them, Safeco indicated that it "would get this one taken care of." *Id.* Despite those assurances, the Petropouloses allege that RTS's inspection report was inconsistent with the statements its representative made on site. *See id.* The report concluded that the property's roof was not damaged by the April 2021 storm but instead attributed the damage to storms in 2016. *See id.*

After the unfavorable RTS report, the Petropouloses hired engineers to further examine the property. *Id.* The engineers documented the damage in a report provided to Safeco. *Id.*

In April 2022, Safeco denied the Petropouloses' claim. *Id.* at 4. The Petropouloses allege that "Safeco acknowledged the presence of hail and wind damage to the Property only to then attribute that same damage to storms occurring six years prior." *Id.* The Petropouloses sued Safeco for "fail[ing] to timely and promptly adjust the Claim," "fail[ing] to issue payment," and "refus[ing] to cover the restoration of the Property." *Id.*

II. Procedural History

In April 2023, the Petropouloses sued Safeco in state court. Dkt. 3. Safeco filed an answer, Dkt. 4, and timely removed the case to this court, Dkt. 1. In December 2023, it invoked the appraisal provision of the insurance policy and appointed Randall Taylor to serve as its appraiser. Dkt. 25-7 at 2–3. In response, the Petropouloses appointed Joel Fisher to serve as their appraiser. Dkt. 25-8 at 3. The parties' appraisers agreed to appoint Taylor Patch as the umpire. Dkt. 25-6 at 2. The parties then filed a motion to abate all deadlines pending the completion of the appraisal process, Dkt. 14, and the court granted the motion, Dkt. 15.

In March 2025, Patch issued the appraisal award, siding with Safeco's appraiser and finding that $27,743.69 was the total amount of loss. Dkt. 25-9. The next day, Safeco issued two checks to the Petropouloses—one for "the replacement cost value of the Award after applying the Policy deductible" of $27,541, Dkts. 25 at 3–4, 25-11, 25-12 at 2, the other for "interest [the Petropouloses] could allege to be owed," Dkts. 25 at 4, 25-11. Given the amount of the deductible, the combined total of the two checks was less than $300. Dkt. 25-11; *see* Dkt. 25-12 at 2.

After the court lifted the stay, the Petropouloses moved to vacate the appraisal award and to appoint a new umpire. Dkt. 23. Safeco moved for summary judgment. Dkt. 25.

LAW

I. Motions to Vacate Appraisal Awards

When sitting in diversity, federal courts look to state substantive law. *Thrash v. State Farm Fire & Cas. Co.*, 992 F.2d 1354, 1356 (5th Cir. 1993). Texas courts have long recognized the validity of appraisal provisions. *Studer v. Lloyds*, No. 4:13-CV-413, 2016 WL 4063782, at *4 (E.D. Tex. July 29, 2016). "Under Texas law, 'appraisal awards made pursuant to the provisions of an insurance contract are binding and enforceable, and every reasonable presumption will be indulged to sustain an appraisal award.'" *JM Walker LLC v. Acadia Ins. Co.*, 356 F. App'x. 744, 746 (5th Cir. 2009) (quoting *Franco v. Slavonic Mut. Fire Ins. Ass'n*, 154 S.W.3d 777, 786 (Tex. App.—Houston [14th Dist.] 2004, no pet.)). As such, the party seeking to avoid the award bears the burden of proof. *TMM Invs. Ltd. v. Ohio Cas. Ins. Co.*, 730 F.3d 466, 472 (5th Cir. 2013) (citing *Franco*, 154 S.W.3d at 786).

"Texas law recognizes only three situations that allow a court to set aside an appraisal award: '(1) when the award was made without authority; (2) when the award was made as a result of fraud, accident, or mistake; or (3) when the award was not in compliance with the requirements of the policy.'" *Mainali Corp. v. Covington Specialty Ins. Co.*, 872 F.3d 255, 258 (5th Cir. 2017) (quoting *Franco*, 154 S.W.3d at 786).

II. Motions for Summary Judgment

A summary-judgment movant bears the initial burden of demonstrating, by reference to record evidence, if necessary, that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), (c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is material if, under the governing substantive law, it could affect the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual issue is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.*

"[A] party opposing a properly-supported summary judgment motion may not rest upon mere allegations contained in the pleadings, but must set forth and support by summary judgment evidence specific facts showing the existence of a genuine issue for trial." *Johnson v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 90 F.4th 449, 460 (5th Cir. 2024) (quotation marks omitted). Although the court must resolve all reasonable doubts in the nonmovant's favor, *Casey Enters., Inc. v. Am. Hardware Mut. Ins. Co.*, 655 F.2d 598, 602 (5th Cir. Unit B Sept. 1981), "[c]onclusional allegations and denials, speculation, and unsupported assertions are insufficient to avoid summary judgment," *Sanches v. Carrollton-Farmers Branch ISD*, 647 F.3d 156, 165 (5th Cir. 2011).

DISCUSSION

I. Motion to Vacate the Appraisal Award

The Petropouloses assert that the appraisal award does not represent "an honest assessment of necessary repairs," adding that "the umpire and competing appraiser did not completely consider all evidence submitted." Dkt. 23 at 3. Safeco argues that those assertions boil down to a single challenge to the appraisal award based on a purported mistake and that the challenge fails. Dkt. 24. It is correct.

Texas courts do not treat a lack of honest assessment as a ground to vacate an appraisal award separate from the grounds of mistake or accident. *See, e.g.*, *Dhaliwal v. Meridian Sec. Ins. Co.*, No. 4:21-CV-56-SDJ, 2023 WL 186810, at *3 (E.D. Tex. Jan. 12, 2023) (describing an award that "might not be 'an honest assessment of necessary repairs'" as an example of a "a potentially unsound appraisal" that could be challenged at trial) (quoting *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 895 (Tex. 2009)); *HWY 67 Dealership JV v. Depositors Ins. Co.*, No. 3:22-cv-00784-L, 2024 WL 3759752, at *14–16 (N.D. Tex. June 17, 2024) (equating "not an honest assessment of damages" with accident or mistake), *report and recommendation adopted,* 2024 WL 3493790, at *2 (N.D. Tex. July 22, 2024); *Nemo Cay Resort Townhome Ass'n, Inc. v. Rockhill Ins. Co.*, No. 2:19-CV-00386, 2021 WL 1180784, at *1–2 (S.D. Tex. Mar. 5, 2021) (same), *report and recommendation* *adopted,* 2021 WL 1174793 (S.D. Tex. Mar. 29, 2021). Under that body of law, the Petropouloses' motion is properly viewed as based on an alleged mistake.

An appraisal award may be set aside for a mistake only "upon a showing that the award does not speak the intention of the appraisers." *JM Walker*, 356 F. App'x at 746 (quoting *Providence Wash. Ins. Co. v. Farmers Elevator Co.*, 141 S.W.2d 1024, 1026 (Tex. Civ. App.—Amarillo 1940, no writ)). In this context, a mistake occurs when the appraisers were operating under a mistake of fact, not a mistake in judgment. *See Dhaliwal v. Meridian Sec. Ins. Co.*, No. 4:21-CV-056-SDJ, 2022 WL 16836609, at *2 (E.D. Tex. Nov. 9, 2022) (*Dhaliwal I*); *Cornelius v. Meridian Sec. Ins. Co.*, No. 4:22-CV-527-Y, 2024 WL 4578544, at *4 (N.D. Tex. Aug. 13, 2024).

"An umpire often must choose between two competing values," *JM Walker*, 356 F. App'x at 747, "and the decision to choose one value over another does not mean the award was premised on a mistake," *Nemo Cay*, 2021 WL 1180784, at *3. In other words, an "umpire's decision to use [one appraiser's] estimate, rather than [the other's], does not mean that the appraisal award resulted from accident or mistake." *Studer*, 2016 WL 4063782, at *5. Further, evidence that an appraiser disagreed with the umpire's decision does not establish a mistake. *See id.*

The Petropouloses have the burden to prove that the appraisal was premised on a mistake of fact. In their effort to do so, they point to letters from contractors stating that the appraisal estimate was "poorly written," Dkt. 23-2 at 3, and "severely lacking," Dkt. 23-4 at 2. The contractors all stated that they could not perform the projected repairs at the price the umpire appraised. *See* Dkts. 23-2, 23-3, 23-4. Based on those letters, the Petropouloses argue that "[t]he award issued by Mr. Patch is clearly deficient and does not represent an honest assessment of necessary repairs." Dkt. 23 at 5.

But as Safeco points out, at least one other appraiser, its own, "agree[d] with the estimate and award as written." Dkt. 24 at 5 (quoting Dkt. 23-1 at 3). And more importantly, the umpire's decision reflected his considered judgment that the opinion of the Petropouloses' appraiser was incorrect:

> In this case, I am unconvinced that there is any significant hail damage to the roof surface. The only area where I am convinced that tile damage **might** have been caused by hail is on the low-sloped high center section. Most of the damage there, in my opinion, is not due to hail, but it is possible that a small amount of it is. The steeper slopes (and frankly, the rest of the slopes) did not exhibit any damage that I am convinced was the result of hail. I want to be very clear that this award gives a significant benefit of (my) doubt toward Mr. Fisher's position. The case for ANY of the tile on this roof being damaged by hail, in my opinion, is very thin at best.

Dkt. 23-1 at 4.

The Petropouloses provide no additional argument or evidence supporting their request to set aside the award. Because they have identified a purported mistake of judgment, rather than a mistake of fact, and because they do not argue that the appraisal was made without authority or was not compliant with the terms of the insurance policy, they are not entitled to relief. *See Dhaliwal I*, 2022 WL 16836609, at *2, *4 (explaining the required showing and finding "a triable issue of fact as to whether the appraisal award at issue mistakenly include[d] losses from preexisting damages that were the subject of claims submitted to his prior insurer and that [the plaintiff] admit[ted] he never repaired").

II. Motion for Summary Judgment

The Petropouloses argue that a ruling on Safeco's motion for summary judgment would be premature because the court has not yet ruled on their motion to vacate the appraisal award. Dkt. 26 at 1. But because the court has concluded that the motion to vacate should be denied, that argument, whatever its merit may at one point have been, no longer has any force. *See Studer*, 2016 WL 4063782, at *5–8 (reaching a motion for summary judgment after declining to vacate an appraisal award).

As noted, the Petropouloses sued Safeco for breach of contract, breach of the duty of good faith and fair dealing, and violations of the Texas Insurance Code and DTPA. Dkt. 7 at 5–13. Safeco argues that its payment of the appraisal award plus interest entitles it to judgment on each of those claims. *See* Dkt. 25 at 5–8. It is correct.

A. Breach of contract

An insurance policy is a contract and, as such, is subject to "ordinary rules of contract interpretation." *Nassar v. Liberty Mut. Fire Ins. Co.*, 508 S.W.3d 254, 257 (Tex. 2017) (quoting *Tanner v. Nationwide Mut. Fire Ins. Co.*, 289 S.W.3d 828, 831 (Tex. 2009)). That means, among other things, that an insurance policy should be "interpreted as a whole and in accordance with the plain meaning of its terms." *Great Am. Ins. Co. v. Primo*, 512 S.W.3d 890, 892 (Tex. 2017). When policy language is "clear and definite," the policy "is not ambiguous and will be construed as a matter of law." *Id.* at 893. The court must resolve any ambiguity in favor of the insured. *Progressive Cnty. Mut. Ins. Co. v. Sink*, 107 S.W.3d 547, 551 (Tex. 2003).

To prevail on a claim for breach of contract, the plaintiff must prove: "(1) the existence of a valid contract[,] (2) performance or tendered performance by the plaintiff[,] (3) breach of the contract by the defendant[,] and (4) damages sustained by the plaintiff as a result of the breach." *Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 418 (5th Cir. 2009) (quoting *Aguiar v. Segal*, 167 S.W.3d 443, 450 (Tex. App.—Houston [14th Dist.] 2005, pet. denied)). An appraisal clause, however, "binds the parties to have the extent or amount of the loss determined in a particular way." *Quibodeaux v. Nautilus Ins. Co.*, No. 1:10-CV-739, 2015 WL 1406375, at *4 (E.D. Tex. Mar. 25, 2015) (quoting *Johnson*, 290 S.W.3d at 895), *aff'd*, 655 F. App'x 984 (5th Cir. 2016)."The effect of an appraisal provision is to estop one party from contesting the issue of damages in a suit on the insurance contract, leaving only the question of liability for the court." *Id.*

To bar a claim for breach of an insurance contract, a defendant must show: "(1) the existence and enforceability of an appraisal award; (2) the timely payment of the award [by the insurer]; and (3) the acceptance of the appraisal award." *Gabriel v. Allstate Tex. Lloyds*, No. 7:13-CV-181, 2013 WL 7885700, at *3 (S.D. Tex. Nov. 1, 2013) (citing *Blum's Furniture Co., Inc. v. Certain Underwriters at Lloyds Lond.*, 459 F. App'x. 366, 368 (5th Cir. 2012) (per curiam)). "[W]here the parties disagree on the amount of loss and submit to the contractual appraisal process to resolve that dispute, and the insurer pays all covered damages determined by the award, the insured may not then argue that the initial failure to pay those damages equates to a breach of the contract."

Scalise v. Allstate Tex. Lloyds, No. 7:13-CV-178, 2013 WL 6835248, at *5 (S.D. Tex. Dec. 20, 2013). "An insurer does not breach the insurance contract where it pays all damages determined by the appraisal." *Quibodeaux*, 2015 WL 1406375, at *4.

The Petropouloses' insurance policy set out the appraisal procedure Safeco invoked:

> If you and we do not agree on the amount of the loss, including the amount of actual cash value or replacement cost, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon such umpire, then, on request of you or the company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then resolve the issues surrounding the loss, appraise the loss, stating separately the actual cash value or replacement cost of each item, and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two of these three, when filed with the company shall determine the amount of loss.

Dkt. 25-2 at 40–41 (emphasis omitted).

As noted, the appraisal award is valid. And the appraisal clause is not ambiguous; neither party argues otherwise. *See* Dkts. 25, 26, 27. The umpire and Safeco's appraiser satisfied the requirements of the policy's appraisal process by signing the appraisal award. Dkt. 25-9 at 2. And Safeco paid the appraisal award to the Petropouloses the day after it was finalized. Dkts. 25-11 at 2, 25-12 at 2. Although the Petropouloses argue that the amount of the award was insufficient, they do not dispute receiving payment or claim that they rejected Safeco's checks. *See* Dkt. 26 at 2.

In short, Safeco has demonstrated the existence of an appraisal award and its timely payment. Because the court will not set aside the appraisal award, the Petropouloses' breach-of-contract claim is foreclosed. *See Ortiz v. State Farm Lloyds*, 589 S.W.3d 127, 133 (Tex. 2019) (finding that an insurer was entitled to summary judgment on a similar breach-of-contract claim because the insured "failed to identify any breach other than the failure to timely pay the amount of the covered loss under the policy").

B. Remaining claims

Generally, "timely payment of an appraisal award under the policy precludes an award of statutory penalties under the Texas Insurance Code §§ 541 and 542 as a matter of law." *Studer*, 2016 WL 4063782, at *8 (quoting *United Neurology, P.A. v. Hartford Lloyd's Ins. Co.*, 101 F. Supp. 3d 584, 598 (S.D. Tex. 2015)). The same is true for DTPA claims. *See Scalise*, 2013 WL 6835248, at *8. "The only recognized exceptions to this rule are if the insurer commits some act, so extreme, that [it] would cause injury independent of the policy claim or fails to timely investigate the insured's claim." *Quibodeaux*, 2015 WL 1406375, at *8 (cleaned up); *see also Guiles v. GeoVera Advantage Ins. Servs., Inc.*, No. 24-40411, 2025 WL 893755, at *1 (5th Cir. Mar. 24, 2025) (noting that "[t]he Texas Supreme Court has made clear that 'payment of an appraisal award forecloses an insurer's liability for breach of contract and common-law and statutory bad faith unless the insured suffered an independent injury'").

The Petropouloses do not allege injuries other than those arising from their original insurance claim. *See* Dkt. 7. They seek "the actual costs of the repair and remediation of [their] Property and any investigative and engineering fees incurred therein," claiming entitlement to "their out-of-pocket damages, costs of mitigation, additional living expenses, diminution of the value of the Property, lost time, loss of use, and expectancy damages." *Id.* at 14. They also seek "actual, consequential, and general damages," "extracontractual damages for economic and personal injuries," and "the amount of their claim plus prejudgment interest, statutory interest, post-judgment interest, and attorneys' fees." *Id.* All of that relates to one injury: Safeco's failure to pay their insurance claim. Safeco properly avoided liability on that claim by timely paying the appraisal award plus interest. *See* Dkts. 25-11 at 2, 25-12 at 2. In short, because the breach-of-contract claim fails and the Petropouloses do not allege an independent injury, their extra-contractual claims for bad-faith violations under the DTPA and the Texas Insurance Code also fail. *See Studer*, 2016 WL 4063782, at *8; *Scalise*, 2013 WL 6835248, at *8.

So does the Petropouloses' claim under the Texas Prompt Payment of Claim Act ("TPPCA"). A plaintiff seeking damages under that statute must establish: "(1) the amount for which [the insurer] is contractually liable under the insurance policy; (2) that [the insurer] failed to comply with statutory deadlines; and (3) statutory damages based on the amount contractually owed less the amounts paid within the statutory deadline." *Schnell v. State Farm Lloyds*, 98 F.4th 150, 158–59 (5th Cir. 2024) (quoting *Hinojos v. State Farm Lloyds*, 619 S.W.3d 651, 658–59 (Tex. 2021) (footnote omitted)). When an insurer pays an appraisal award plus interest in accordance with the TPPCA, the insured may not recover under that statute. *First Baptist Church Daisetta Tex. v. Church Mut. Ins. Co.*, No. 1:23-CV-00193-MAC-ZJH, 2024 WL 3635304, at *4 (E.D. Tex. May 29, 2024) (collecting cases), *report and recommendation adopted,* 2024 WL 3935429 (E.D. Tex. Aug. 23, 2024), *aff'd,* No. 24-40594, 2025 WL 893797 (5th Cir. Mar. 24, 2025).

There is no genuine issue of material fact on the Petropouloses' TPPCA claim. Again, the evidence shows that the appraisal provision of the insurance policy was invoked and Safeco timely paid the appraisal award plus interest. And although the Petropouloses contest Safeco's assertion that it paid "any conceivable interest [they] could allege to be owed," Dkt. 26 at 2 (quoting Dkt. 25 at 4), they do not offer any argument on that point or identify summary-judgment evidence that raises a fact question on it. *See Johnson*, 90 F.4th at 460; *Sanches*, 647 F.3d at 165; Dkt. 25-12 at 1 (explaining how Safeco calculated the interest payment). As the court concluded in *Studer*, "full and timely payment of an appraisal award under the policy precludes an award of penalties under the [Texas] Insurance Code's prompt payment provisions as a matter of law." 2016 WL 4063782, at *8 (citations omitted) (alterations in original).

RECOMMENDATION

It is **RECOMMENDED** that:

1) the Petropouloses' motion to vacate the appraisal award, Dkt. 23, be **DENIED**;
2) Safeco's motion for summary judgment, Dkt. 25, be **GRANTED**; and
3) the Petropouloses' claims be **DISMISSED WITH PREJUDICE**.

* * *

Within 14 days after service of this report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1).

A party is entitled to a de novo review by the district court of the findings and conclusions contained in this report only if specific objections are made. *Id.* § 636(b)(1). Failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report will bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *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 10 to 14 days).

So **ORDERED** and **SIGNED** this 12th day of February, 2026.

Bill Davis
United States Magistrate Judge