

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**ASHISH KUMAR an individual, and
ARCHITA AGARWAL an individual
Plaintiffs,**

VS.

**HOMESITE INSURANCE COMPANY
Defendant.**

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CIVIL ACTION NO. 3:24-cv-00445-S

JOINT MOTION TO APPOINT UMPIRE

Plaintiffs Ashish Kumar and Archita Agarwal (“Plaintiffs”) and Defendant Homesite Insurance Company (“Defendant”) jointly request the Court to appoint an umpire, and in support thereof, would show as follows:

I.

Background

1. This cause arises out of a first-party homeowners’ insurance claim for wind/hail damage.
2. Plaintiffs claim damage to their property, and Homesite disputes that the claimed damages are storm-related.
3. The Scheduling Order [Doc. 12] entered on April 26, 2024, reflects the parties’ desire to participate in early mediation or appraisal with the goal of reaching resolution by August 24, 2024 (120 days after entry of the Order).
4. Homesite invoked appraisal on April 29, 2024, to determine the amount of loss by wind/hail.
5. Both parties have appointed appraisers, but the appraisers have been unable to agree on an umpire. Therefore, the parties respectfully request the Court to appoint an umpire.

II.
Argument and Authorities

6. Plaintiffs are insured under a homeowners' insurance policy, No. TX 36017102, issued by Homesite. Plaintiffs' property is located at 408 Fairlands Circle, Coppell, Texas 750194.

7. Plaintiffs assert their home was damaged by wind/hail on or about April 4, 2022. Homesite and Plaintiffs disagree about the amount of loss by wind/hail. Therefore, by letter dated April 29, 2024, Homesite invoked the appraisal process set forth in the policy.

8. The purpose of appraisal is to determine the amount of loss and attempt to resolve the claim. *State Farm Lloyd's v. Johnson*, 290 S.W.3d 886, 894 (Tex. 2009).

9. The appraisal provision of the policy is as follows:

PROPERTY FORM 3 SPECIAL FORM - HDA 00 03 05 11

SECTION I - CONDITIONS

F. Appraisal

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal

10. Each party chose an appraiser on April 29, 2024:

Plaintiffs' appraiser: Michael Ogden
ALL DISASTER CLAIMS, INC.
3235 Pawnee Pride
San Antonio, TX 78261
210-227-2200
Adjuster@alldisasterclaims.com

Homesite's appraiser: Gene Kounse
GENE KOUNSE & ASSOCIATES, INC.
512-368-0475
gene.kounse@gmail.com

11. The appraisers informed the parties during the week of May 20, 2024, that they failed to agree on an umpire. The policy states: "If [the appraisers] cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record..."

12. Since the appraisers have failed to agree on an umpire within the required time, the parties request the Court to appoint an umpire.

13. If the Court wishes the parties to propose umpires for the Court's consideration, each party will provide a short list of suggestions to the Court with contact information and general qualifications.

III. **Prayer**

14. The Parties pray that this Court appoint an umpire and grant such other and further relief to which they may be entitled.

Respectfully submitted,

BY: /s/ Erik Ekvall

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