

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

GLORIA CELESTE YOUNG

PLAINTIFF

VS.

CIVIL ACTION NO. 2:23-cv-175-KS-MTP

STATE FARM FIRE AND CASUALTY
COMPANY

DEFENDANT

ORDER

Before the Court are motions, as follows: (1) Defendant State Farm Fire and Casualty Company's ("State Farm's") Motion to Dismiss Amended Complaint [30], and (2) State Farm's Motion to Compel Appraisal and to Stay [40]. These motions are fully briefed. For the reasons explained below, the Court finds that State Farm's Motion to Compel Appraisal and to Stay [40] should be granted. Defendant State Farm's Motion to Dismiss Amended Complaint [30] is denied as moot.

I. **BACKGROUND AND CLAIMS**

Plaintiff Celeste Young ("Young") brings claims related to a home insurance policy issued by State Farm on her residence located at 112 Elias Whiddon Road in Hattiesburg, Mississippi, and which sustained fire damage on January 21, 2023. [28] at 3.¹ The lawsuit concerns only property insurance coverage for buildings, referenced as the "A1 coverage," and not for personal contents. *Id.* at 2. In particular, Plaintiff disputes the manner in which State Farm used the "Xactimate" software program² to calculate her repair and construction costs for her loss. *Id.* at 3-

¹ Plaintiff filed her initial Complaint [1] on November 13, 2023, and her Amended Complaint [28] on January 24, 2024. Defendant filed its Motion to Dismiss Amended Complaint [3] on February 7, 2024, and its Motion to Compel Appraisal and Stay followed on April 3, 2024. *See* [40].

² According to Plaintiff, "Xactimate" is a software program used to adjust property loss claims that uses periodically updated price lists and labor efficiencies that are specific to the general geographic location of a loss. [28] at 3.

4. Plaintiff alleges that instead of using the “Restoration/Service/Remodel Labor Efficiency” setting in Xactimate, State Farm intentionally used the “New Construction Labor Efficiency” setting in the program. *Id.* at 4. The difference, Plaintiff alleges, is that use of the “Restoration/Service/Remodel Labor Efficiency” accounts for additional labor and time involved in a restoration project that is not present in a new construction project. *Id.* at 6. Therefore, an estimate for repair and subsequent calculation of an actual cash value payment to an insured will be higher under the “Restoration/Service/Remodel Labor Efficiency” than when using the “New Construction Labor Efficiency” setting in Xactimate.

Plaintiff alleges that State Farm, using the “New Construction Labor Efficiency” setting, calculated the replacement cost value of her fire-damaged property at \$254,656.75, and it calculated the depreciation of her property as \$86,539.39. *Id.* at 8. After subtraction of her deductible of \$1,530.00 and the depreciation, State Farm paid actual cash value of \$149,279.53 to Plaintiff. *Id.*³

Plaintiff asserts that an estimate calculated by her contractor that reflects each individual entry made by State Farm in its calculation, but which uses the “Restoration/Service/Remodel Labor Efficiency” setting in Xactimate, results in a replacement cost value of \$306,621.62. *Id.* at 9. According to Plaintiff, this calculation represents a difference of \$51,864.87 in State Farm’s favor, characterized by Plaintiff as a “wrongfully suppressed . . . replacement cost value” of her claim. *Id.*; *see also* [28-6] at 36. She also asserts that but for State Farm’s use of the “New Construction Labor Efficiency,” her loss would have qualified as a “total loss” under the applicable limits of the policy. [28] at 9. Plaintiff asserts that State Farm’s failure to pay the full cost of the

³ Under Young’s policy, “when the repair or replacement is actually completed, [State Farm] will pay the covered additional amount [Young] actually and necessarily spend[s] to repair or replace the damaged part of the property,” referred to as replacement cost benefits. [28-1] at 21.

work necessary to return her to her pre-loss condition has left her under-indemnified and underpaid. Young further asserts that State Farm fraudulently concealed this practice of calculating actual cash value payments from her and similarly situated policyholders.⁴

Plaintiff alleges that State Farm's practice of calculating actual cash value using this formula is a breach of contract. *Id.* at 9, 19. Young claims that State Farm's actions constitute negligence and/or gross negligence, as well as bad faith. *Id.* at 21-24. Plaintiff seeks a declaratory judgment on behalf of herself and the proposed class, as well as compensatory damages, pre-judgment interest, extra-contractual damages, punitive and exemplary damages, attorney's fees, costs, and other expenses. *Id.* at 26.

II. MOTION TO COMPEL APPRAISAL AND STAY

Plaintiff's policy contains an appraisal provision by which the insured and the insurer may resolve valuation disputes. *See* [28-1] at 24. The provision provides, in part, that if the insured and the insurer "fail to agree on the amount of loss," either party may demand an appraisal in writing. *Id.* "At least 10 days before demanding appraisal, the party seeking appraisal must provide the other party with written, itemized documentation of a specific dispute as to the amount of the loss, identifying separately each item being disputed." *Id.* The appraisal provision may be invoked by either party prior to the filing of an action relating to the amount of the loss. *Id.* at 24-25. After an action related to the amount of loss is filed, the party who has brought the action may not demand appraisal. *Id.* at 25.

⁴ Plaintiff has filed this complaint as a class action on her behalf and all others similarly situated, with a proposed class defined as:

All persons and legal entities insured under a State Farm homeowner or property policy who submitted a claim for partial structural damage and which were not designated a "total loss" whose [actual cash value] and [replacement cost value] payments were calculated by application of "New Construction" labor efficiency setting in Xactimate from November 10, 2020, to the date of trial, inclusive. [28] at 12. Plaintiff asserts subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1132(d). *Id.* at 2.

In its Motion to Compel Appraisal and Stay, Defendant sets forth a chronology of the parties' competing estimates for the repair work on Plaintiff's home, culminating in State Farm's appraisal demand. Defendant asserts that in April 2023, it estimated the cost to repair Young's home at \$254,656.70. [41] at 2; *see also* [40-4] at 2. Plaintiff's contractor's initial estimate of January 2023 totaled \$387,967.79 for restoration, and it included a separate estimate in the amount of \$60,391.71 for remediation. *See* [28-7], [28-8]. State Farm asserts that the estimate provided by Plaintiff's contractor in January 2023 was incomplete based on his statement to State Farm that "I stopped writing my rebuild estimate here due to limits[;] there is still plenty more im [sic] sure I could keep writing" *See* [40-2] at 2.

Young also pursued a complaint against State Farm with the Commissioner of Insurance on April 3, 2023. [42-1]. State Farm filed a response on April 17, 2023. [42-2]. That same date, State Farm tendered a check to Plaintiff in the amount of \$149,279.53, representing its valuation of the actual cash value of the repair work. *Id.* at 3. In its response to the Commissioner's inquiry, State Farm noted that, after payment of the actual cash value and other personal property and living expenses, "the claim remains in open status as State Farm's Mississippi-based claims team continues to adjust the claim." *Id.* at 1. At some point thereafter, Young began the repair process.

On January 12, 2024, after filing this action in November 2023, Young provided State Farm with an invoice for reconstruction work in the amount of \$369,797.59. [40-4] at 2. In a letter to Plaintiff's counsel dated January 19, 2024, State Farm's counsel (retained for adjustment purposes) noted that in April 2023 State Farm had estimated the cost of repair to be \$254,656.70, whereas Plaintiff's January 2024 estimate was \$369,797.59. State Farm's adjustment counsel advised Plaintiff's counsel of State Farm's intent to request an appraisal and also stated:

From a review of the two estimates, it appears that State Farm and [Plaintiff's contractor] agree on most, if not all covered repairs to the house, but disagree on the

pricing of those repairs, *specifically the labor efficiency*. We do not see any coverage or causation issues presented by the competing estimates, but if you think there are, please let me know and we will investigate them.

Given the foregoing, please be advised of State Farm's intention to demand an appraisal to set the amount of the loss.

[40-4] at 2-3 (emphasis added). On January 19, 2024, State Farm's adjustment counsel also inquired in a separate letter about the status of repairs so that the insurer could determine whether replacement cost benefits were payable. [40-3] at 7. State Farm's adjustment counsel received no response from Plaintiff's counsel to either letter until February 2, 2024, when she sent a follow-up email and left a voice mail message. *Id.* On February 2, Plaintiff's counsel acknowledged receipt of her email and separately sent an incomplete copy of the contract for work on the home dating back to January 2023. *Id.* at 5-6.

In the days and weeks following, a flurry of emails and letters passed between counsel for the parties regarding the status of the repair work represented by invoices submitted by Plaintiff and whether State Farm had complied with the notice requirements of the appraisal provision. Relevant to the Court's analysis, on February 8, 2024, an email from Plaintiff's counsel to State Farm's adjustment counsel clarified the total scope of work completed and work yet to be completed. [40-3] at 2. On that date, Plaintiff's counsel provided a January 9, 2024, estimate for completed repairs in the amount of \$369,797.59, and a January 11, 2024, estimate for repairs yet to be completed in the amount of \$12,912.12, for a total of \$382,709.71. *See* [40-8], [40-9]. On February 29, 2024, having heard no response to the letter of January 19 regarding the pricing dispute and its intention to seek appraisal, State Farm's adjustment counsel formally invoked the insurer's right to demand appraisal. [40-5] at 2. On March 6, 2024, Plaintiff's counsel acknowledged that State Farm had requested an appraisal, but disputed whether State Farm had met the appraisal requirement of providing "the other party with written, itemized documentation

of a specific dispute as to the amount of the loss, identifying separately each item being disputed.” [40-6] at 2. In a letter dated March 25, 2024, State Farm’s adjustment counsel asserted that the company had complied with the written itemization condition for demanding appraisal by pointing to the overall pricing difference between State Farm’s initial January 2023 estimate of \$254,656.70 and its March 2024 updated estimate of \$257,238.52, as compared with Plaintiff’s February 8, 2024, updated estimate of \$382,709.71. [40-13] at 2. State Farm’s adjustment counsel reiterated that “[w]e do not see any coverage or causation issues between the estimates, and you have not identified any. Accordingly, this is just a dispute over the cost of covered repairs.” *Id.* at 2-3. In a separate letter dated March 25, 2024, State Farm’s adjustment counsel tendered a check to Plaintiff’s counsel in the amount of \$114,167.44, which represented replacement cost benefits in the amount of \$106,428.99 and \$7,738.45 for pack-in and storage of Young’s personal items. [40-14] at 3. State Farm filed its Motion to Compel Appraisal and to Stay on April 3, 2024.

III. ANALYSIS

State Farm asks that Plaintiff be directed to comply with the appraisal provision of her policy and asks that this matter be stayed to allow appraisal. [41]. Plaintiff responds that her claims cannot be resolved by appraisal, that State Farm’s Motion to Compel Appraisal is untimely, and that State Farm has waived the appraisal provision. [43] at 1-11. Young argues, furthermore, that State Farm failed to comply with the itemization requirement of the policy, and that this matter should not be stayed. *Id.* at 11-15.

“Mississippi law favors amicable settlements of controversies without court intervention.” *Mitchell v. Aetna Cas. and Sur. Co.*, 579 F.2d 342, 350 (5th Cir. 1978). Appraisal provisions in insurance contracts help achieve this goal. To that end, “[a]ppraisal clauses embedded in property

insurance contracts are enforceable under applicable Mississippi law.” *Kuehn v. State Farm Fire and Cas. Co.*, No. 1:08cv577-LTS-RHW, 2009 WL 2567485, at *7 (S.D. Miss. Aug. 17, 2009)(citations omitted); *see also City of Laurel, Mississippi v. ARGO GROUP US*, No. 2:08cv185-KS-MTP, 2009 WL 112220 (S.D. Miss. Jan. 14, 2009). When an insurance contract provides for a submission to an appraisal of the question of the amount of loss or damages, both parties have a duty to act in good faith and to make a fair effort to carry out such an agreement. *Hartford Fire Ins. Co. v. Conner*, 79 So. 2d 236, 239 (Miss. 1955).

Plaintiff first argues that an appraisal cannot address her claims of deceptive and wrongful claims handling. Even so, other district courts, when faced with similar claims in factually parallel cases, have ordered appraisals. *See Shearer v. State Farm Fire and Casualty Co.*, No. 16-09469(FLW)(LHG), 2017 WL36611743, *at 3 (D. N.J. Aug. 22, 2017); *Han v. State Farm Fire and Cas. Co.*, No. 2:21cv4219-JXN-JRA (D. N.J. June 30, 2022)(unpublished)(attached as Defendant’s Exhibit B, [40-15]); *see also Enger v. Allstate Ins. Co.*, 407 F. App’x 191, 193 (9th Cir. 2010)(ordering appraisal as condition precedent to suit when parties disputed valuation method)(“Until an appraisal is completed, it is impossible to know whether [plaintiff’s] claim in fact was undervalued, such that her claims for breach of contract, breach of the covenant of good faith and fair dealing . . . are viable.”). Both *Shearer* and *Han* dealt with State Farm’s invocation of an appraisal provision after plaintiffs, having suffered fire losses, sued State Farm alleging claims of breach of contract and bad faith based on the insurance company’s calculation of actual cash value and replacement costs using the Xactimate software. In both cases, plaintiffs alleged that State Farm purposefully used the new construction setting in Xactimate rather than the appropriate replacement/repair setting to produce a lower actual cash value. In one case, the district court found that Plaintiff’s breach of contract claims did not void the appraisal provision

of the insurance contract because the alleged breach concerned the determination of the amount of the loss. *See Shearer*, 2017 WL36611743, *at 3. In *Han*, the court acknowledged that the plaintiff had brought claims of bad faith and breach of contract, yet still ordered appraisal in compliance with the insurance contract's terms. [40-15] at 6. While the Court does not condone any alleged acts of deceptive and wrongful claims handling, it finds no reason to deviate from the course charted by the *Han* and *Shearer* courts. The reconciliation of the varying estimates is a goal of the appraisal provision.

As for Plaintiff's argument that State Farm's appraisal demand is untimely and has been waived, the Court disagrees. "[W]hile an unreasonable delay is a factor in finding waiver, reasonableness must be measured from the point of impasse." *Dike v. Valley Forge Ins. Co.*, 797 F. Supp. 2d 777, 784 (S.D. Tex. 2011)(citations omitted). As in *Shearer*, Young has "identified no law or provision of the parties' agreement limiting the time for Defendant to enforce the appraisal provision, and the Court finds that, regardless, State Farm's demand was made within a reasonable time." *Shearer*, 2017 WL36611743, *at 3. To be sure, "appraisal and arbitration clauses are routinely invoked during litigation." *Dwyer v. Fidelity Nat. Prop. and Cas. Ins. Co.*, 565 F.3d 284, 288 (5th Cir. 2009).

Here, Plaintiff filed her original complaint on November 13, 2023, following her January 2023 fire loss. While Plaintiff argues that the "point of impasse" occurred when Young's contractor produced his initial estimate of \$387,967.79 in January 2023, the Court finds that it occurred much later. Only after Plaintiff submitted an invoice directly to State Farm on January 12, 2024, in the amount of \$369,797.59 as proof of her actual repair costs did the matter become ripe or reach the "point of impasse." State Farm's adjustment counsel notified Plaintiff's counsel on January 19, 2024, of State Farm's intent to request an appraisal "based on the pricing for those

repairs, specifically the labor efficiency.” [40-4] at 2-3. Thereafter, on February 8, 2024, Plaintiff’s counsel supplied State Farm’s adjustment counsel with finalized estimates for repair for a total of \$382,709.71 and confirmed the extent of the work. Thus, the scope of the disparity between the parties’ estimates (\$382,709.71 by Plaintiff in February 2024 versus \$254,656.70 by State Farm in January 2023) became fully apparent on February 8, 2024, when Plaintiff’s counsel affirmed that the work had been substantially completed and presented State Farm’s adjustment counsel with the final estimates for work completed and yet to be done. *See* [40-3] at 2, [40-8], [40-9]. On February 29, 2024, over one month following notice of its intent to invoke the appraisal provision, adjustment counsel for State Farm formally demanded appraisal under the provisions of the contract. [40-5] at 2. Because State Farm’s adjustment counsel notified Plaintiff’s counsel of its intent to seek appraisal within one week of the matter becoming ripe, its appraisal demand is not untimely. *See Greater Trueway Apostolic Church v. Church Mut’l Ins. Co.*, No. 2:11cv237-KS-MTP, 2012 WL 1143947 (S.D. Miss. Apr. 4, 2012)(finding that a demand for appraisal nearly five years after the date of loss and over three years following final payment on the claim was untimely).

Moreover, the insurance contract envisions invocation of the appraisal provision after litigation has begun. The contract provides that “[a] party may not demand appraisal after that party brings suit or action against the other party relating to the amount of the loss.” [28-1] at 25. Thus, by the insurance contract’s terms, State Farm was free to invoke the appraisal process after Plaintiff initiated this action.

Neither is the Court persuaded that State Farm failed to comply with the itemization requirement of the appraisal provision. The insurance contract provides that “the party seeking appraisal must provide the other party with written, itemized documentation of a specific dispute

as to the amount of the loss, identifying separately each item being disputed.” [28-1] at 24 (¶ 4). In her letter of January 19, 2024, State Farm’s adjustment counsel pointed to the specific dispute between the parties with regard to the estimates, stating that the parties disagree “on the pricing for those repairs, specifically the labor efficiency. We do not see any coverage or causation issues presented by the competing estimates” [40-4] at 2 (emphasis added). With that statement, State Farm’s adjustment counsel identified the source of the dispute between the parties, plain and simple. Coverage and causation are not at issue; only the labor efficiency is contested. No line-by-line comparison of the parties’ competing estimates was needed to document the disagreement. The Court will hold State Farm to this position.

IV. CONCLUSION

Accordingly, for the reasons explained above, the Court hereby grants Defendant State Farm’s Motion to Compel Appraisal and to Stay [40]. State Farm’s Motion to Dismiss Amended Complaint [30] is denied as moot. This matter is hereby STAYED for a period of 90 days for the parties to pursue appraisal. At the end of the 90-day period, the parties shall report to the Court the status of the appraisal process by filing a “Status Report” on the docket. While the stay is pending, the Clerk of Court is hereby directed to administratively close the case for statistical purposes.

SO ORDERED AND ADJUDGED, this 12th day of August, 2024.

/s/ Keith Starrett
KEITH STARRETT
UNITED STATES DISTRICT JUDGE