

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

PLEASANT HILL CHRISTIAN  
CHURCH MINISTRIES, INC.,

Plaintiff,

vs.

Case No. 2:24-cv-00417-JLB-KCD

OHIO SECURITY INSURANCE  
COMPANY,

Defendant.

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**DEFENDANT OHIO SECURITY INSURANCE COMPANY'S**  
**MOTION TO APPOINT UMPIRE FOR APPRAISAL**  
**AND MEMORANDUM OF LAW**

Defendant Ohio Security Insurance Company (“Ohio Security”) moves this Court to appoint an umpire for appraisal, and states:

**I.**

**SUMMARY**

The appraisers cannot agree on an umpire, so this Court should appoint one for the appraisal. The Policy allows either party to move the Court to select an umpire. Ohio Security proposes three highly qualified umpires for this Court’s selection.

## II.

### FACTS

1. This case involves alleged property damage arising from Hurricane Ian on September 28, 2022.<sup>1</sup>

2. Ohio Security issued a commercial property insurance policy (“Policy”) to Plaintiff Pleasant Hill Christian Church Ministries, Inc. (“Plaintiff”).<sup>2</sup>

3. Plaintiff sued Ohio Security for breach of contract arising from the alleged Hurricane Ian loss to the insured property.<sup>3</sup>

4. Ohio Security timely removed the action to this Court.<sup>4</sup>

5. On May 24, 2024, pursuant to the Policy and this Court’s Hurricane Ian Scheduling Order,<sup>5</sup> Plaintiff moved to compel appraisal of the loss.<sup>6</sup>

6. Ohio Security opposed Plaintiff’s motion to compel appraisal as premature because Plaintiff had not complied with its post-loss obligations under the Policy.<sup>7</sup>

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<sup>1</sup> ECF No. 5 at ¶13.

<sup>2</sup> ECF No. 1-3.

<sup>3</sup> ECF No. 5.

<sup>4</sup> ECF No. 1.

<sup>5</sup> ECF No. 13.

<sup>6</sup> ECF No. 18.

<sup>7</sup> ECF No. 20.

7. This Court denied Plaintiff's motion to compel appraisal.<sup>8</sup> This Court agreed that Plaintiff's motion was premature because its post-loss obligations remained unsatisfied.

8. After submission of a sworn statement in proof of loss and estimate to Ohio Security, Plaintiff move to compel appraisal, which Ohio Security did not oppose.<sup>9</sup>

9. This Court granted Plaintiff's motion and stayed the case pending appraisal.<sup>10</sup>

10. In July, Plaintiff named David Messeri of Fraser Property & Adjusting, Inc. as its appraiser, and Ohio Security named Patrick Lewis of Lewis Claim Solutions LLC as its appraiser.

11. On August 8, 2024, Plaintiff withdrew David Messeri as its appraiser and instead appointed Shimmy Casper as its appraiser.

12. On September 30, 2024, the parties filed a joint status report regarding appraisal.<sup>11</sup> The parties informed the Court that the appraisers had communicated multiple times with each other about this claim, they did not agree on the damages for the claim, and they were in the process of selecting an umpire for the appraisal conference.

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<sup>8</sup> ECF No. 23.

<sup>9</sup> ECF No. 25.

<sup>10</sup> ECF No. 26.

<sup>11</sup> ECF No. 27.

13. The appraisers have been unable to agree on an umpire.
14. The Policy's appraisal provision states:<sup>12</sup>

**BUILDING AND PERSONAL  
PROPERTY COVERAGE FORM**

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**E. Loss Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

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**2. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we still retain our right to deny the claim.

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<sup>12</sup> ECF No. 1-3 at pgs. 102-103.

### III.

#### ARGUMENT

The Policy contemplates that the appraisers select an umpire. But here, the appraisers cannot agree on an umpire. Thus, the Policy allows either party to petition the Court to select an umpire.

In an insurance claim appraisal, a court may appoint a person with appropriate expertise, such as a well-qualified contractor, retired judge, or attorney. See *Liberty Mut. Fire Ins. Co. v. Hernandez*, 735 So.2d 587, 589 (Fla. 3d DCA 1999) (trial court could appoint well-qualified contractor or retired judge as umpire); *Metro. Cas. Ins. Co. v. SFR Servs. L.L.C.*, 2020 WL 4207561 at \*1 (M.D. Fla., July 7, 2020), report and recommendation adopted, 2020 WL 4207375 (M.D. Fla., July 22, 2020) (finding that adjuster was exceptionally qualified to serve as an umpire for a claim involving hurricane damage); *St. Lucia Condo. Ass'n, Inc. v. Lexington Ins. Co.*, 2020 WL 13882084 at \*1 (M.D. Fla., Oct. 29, 2020) (finding proposed umpire highly qualified who acted as an umpire in over 1,000 losses); *Diamond Lake Condo. Ass'n, Inc. v. Empire Indem. Ins. Co.*, 2020 WL 6585597 at \*1 (M.D. Fla., Nov. 10, 2020) (finding general contractor with extensive experience to be highly qualified to act as an umpire); *Castillo At Tiburon Condo. Ass'n, Inc. v. Empire Indem. Ins. Co.*, 2021 WL 6550954 at \*2 (M.D. Fla., Nov. 17, 2021), report and recommendation adopted, 2021 WL 5937161 (M.D. Fla., Dec. 16,

2021) (finding that plaintiff presented no compelling evidence to suggest that proposed general contractor was unqualified or lacked impartiality to be an umpire); *May S&P, LLC v. Axis Surplus Ins. Co.*, 2023 WL 9953408 at \*3 (M.D. Fla., Sept. 11, 2023) (court appointed a retired judge as umpire). To perform competently as an appraiser for the purpose of determining the amount of the loss, “logic and common sense require that an appraiser must have experience in the estimation of materials and labor costs for the repair and replacement of damaged property.” *Noa v. Fla. Ins. Guar. Assoc.*, 215 So.3d 141, 143 (Fla. 3d DCA 2017).

Ohio Security proposes three highly qualified umpires. Ohio Security requests that this Court appoint one of the following individuals:

1. Rosa Rodriguez (Ret.) of Salmon & Dulberg: She served for 19 years as a Florida state court Circuit Judge. She is a Certified Windstorm Insurance Network Umpire.<sup>13</sup>
2. Art Newman of Belfor: He is a Certified General Contractor with 29 years of experience in disaster restoration, construction, loss damage assessment, and building valuation.<sup>14</sup>

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<sup>13</sup> Exhibit A, Judge Rodriguez’s Curriculum Vitae.

<sup>14</sup> Exhibit B, Art Newman’s Curriculum Vitae.

3. Alan Green of Green Construction Consulting: He is a Certified Building Contractor and Wind Network certified umpire and appraiser.<sup>15</sup>

Ohio Security requests that the Court retain jurisdiction to resolve any disputes related to the appraisal process. *See United Spec. Ins. Co. v. W2S, LLC*, 2020 WL 1277508 at \*2 (M.D. Fla., Mar. 2, 2020), report and recommendation adopted, 2020 WL 1275647 (M.D. Fla., Mar. 17, 2020) (court retained jurisdiction to resolve any disputes related to the appraisal process, including any disputes related to causation and coverage).

Moreover, Ohio Security requests that the appraisal panel specifically delineate replacement cost, actual cash value, and ordinance or law figures. *See Zhou v. Westchester Surplus Lines Ins. Co.*, 2024 WL 3642422 at \*2 (M.D. Fla., July 19, 2024) (holding that appraisal panel must delineate replacement-cost values, actual-cost values, ordinance-or-law figures, and any other policy-benefit figures as appropriate). And, to the extent the award includes matching costs for replacing undamaged property items, those costs must be set forth in the replacement cost award only (not the actual cash value award). *Id.*; *see also Vazquez v. Citizens Prop. Ins. Corp.*, 304 So.3d 1280, 1285 (Fla. 3d DCA 2020) (agreeing with trial court that actual cash value does not include matching costs).

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<sup>15</sup> Exhibit C, Alan Green's Curriculum Vitae.

WHEREFORE, Defendant Ohio Security Insurance Company respectfully requests that this Court enter an Order appointing an umpire for the appraisal, retain jurisdiction to resolve any disputes related to the appraisal process, and for all other relief the Court deems just and proper.

**LOCAL RULE 3.01(G) CERTIFICATION**

Counsel for Ohio Security discussed this motion, and the relief requested in it, with counsel for Plaintiff on November 6, 2024. Plaintiff opposes this motion and the relief requested in it.

BUTLER WEIHMULLER KATZ CRAIG LLP

s/ Paul Hudson Jones II

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**CERTIFICATE OF SERVICE**

I certify that a copy has been served on:

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by CM/ECF on November 6, 2024.

s/ Paul Hudson Jones II  
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