IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PHILADELPHIA INDEMNITY INSURANCE COMPANY,	)	
Plaintiff,	)	**No. 15 cv 10798**
v.	)	**Magistrate Judge Michael T. Mason**
NORTHSTAR CONDOMINIUM ASSOCIATION,	)	
Defendant.	)	

Written opinion by Magistrate Judge Michael T. Mason: For the reasons set forth below, Defendant Northstar Condominium Association's motion to compel appraisal [23] is granted. The matter is stayed pending the appraisal. The 10/19/16 status hearing is stricken; no appearance is necessary on that date. The parties are to submit a joint status report regarding the status of the appraisal by 12/16/16.

STATEMENT

Plaintiff Philadelphia Indemnity Insurance Company (hereinafter "PIIC" or "plaintiff") issued coverage to defendant Northstar Condominium Association (hereinafter "Northstar" or "defendant") with effective dates July 29, 2013 to July 29, 2014. On April 12, 2014, a wind/hail storm caused damage to defendant's property. Additional storms occurred on or about June 13, 2015 and August 2, 2015, which also allegedly caused damage to defendant's property. Plaintiff does not dispute that it is responsible for the damage caused on April 12, 2014 (hereinafter the "April 2014 storm"). According to defendant, "PIIC has already paid $687,749.23 for the non-disputed actual cash value, resulting from the April 12, 2014 storm." (Motion at 2). PIIC, however, disputes being responsible for additional damage that it claims occurred during the subsequent storms. Consequently, PIIC filed this present lawsuit seeking a judicial determination that it is not responsible for damage caused by storms after its policy expired. Plaintiff also asks the Court to find "that the JS Held Report is the

controlling damage estimate as it best lays out the damage caused by the April 12, 2014 storm."[1] (Dkt. 1 at 1).

Defendant does not argue that plaintiff is liable for damage caused after its policy ended; however, it believes that certain damage plaintiff disputes was indeed caused by the April 2014 storm. Defendant further asserts that an appraisal panel is the appropriate way to determine the value of the damage caused during the April 2014 storm. According to defendant, the PIIC insurance policy contains a requirement that states:

> 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 will still retain our right to deny the claim.
>
> …
>
> "Loss" is defined as "accidental loss or damage."
>
> (Motion at Ex. 1, p. 15, 24).

On August 24, 2016, defendant filed this present motion to compel appraisal [23]. In its motion, defendant argues that the PIIC insurance policy requires the parties to submit this dispute to an appraiser upon written demand because there is a disagreement as to losses sustained during the policy period. Defendant maintains that part of an appraiser's duty is to evaluate the cause of damage in order to determine what loss was incurred during the event at issue. Consequently, it is defendant's position that determining causation is an inherent duty of an appraiser. Defendant asserts that the appraiser can use information regarding the storms, such as wind patterns, to determine if the damage at issue was caused by the April 2014 storm. Defendant emphasizes that causation is different from a coverage determination because whether certain damages are covered under the policy is not the issue; the issue is what damage was sustained in April 2014.

[1] JS Held inspected the property on July 10, 2014 and prepared a 35-page report outlining the damages sustained by each of the buildings on defendant's property.

In response [30], PIIC asserts that the issue is not one of damages, but one of coverage. Specifically, plaintiff argues that the parties disagree as to whether certain damages are covered under the policy based on when they were sustained. It is plaintiff's position that the damages defendant seeks to recover occurred during the 2015 storms, after PIIC's policy ended. Plaintiff contends that an appraiser is inappropriate here because an appraiser is primarily concerned with the value of the loss, not the cause of the damage. Accordingly, plaintiff maintains that coverage determinations are for the courts to assess, not an appraiser.

In its reply [31], Northstar emphasizes that the disagreement in this case is as to the value of the property damage caused by the April 2014 storm. The coverage determination is only relevant once the damages are assessed. Consequently, defendant continues to assert that the PIIC insurance policy requires an appraisal to determine what actual damages resulted from the April 2014 storm. Based on the record, the Court agrees that the matter is subject to an appraisal as outlined in the parties' insurance policy.

Legal Standard

When determining whether to apply a particular clause of a contract, a court's primary objective is to ascertain and give effect to the intention of the parties as expressed in the agreement. *Crum & Forster Managers Corp. v. Resolution Trust Corp.,* 156 Ill. 2d 384, 391 (1993); *Berg v. New York Life Ins. Co.,* 831 F.3d 426, 428 (7th Cir. 2016); *St. Paul Fire & Marine Ins. Co., v. CSX Transp., Inc.,* 502 F.Supp. 2d 792, 799 (C.D. Ill. 2007). In performing that task, the court must construe the policy as a whole, "tak[ing] into account the type of insurance purchased, the nature of the risks involved, and the overall purpose of the contract." *Travelers Ins. Co. v. Eljer Manufacturing, Inc.,* 197 Ill. 2d 278, 292 (2001) (*quoting American States Ins. Co. v. Koloms*, 177 Ill. 2d 473, 479 (1997)). If the words used in the insurance policy are plain and unambiguous, the words should be accorded their plain and ordinary meaning. *State Farm Mutual Automobile Ins. Co. v. Villicana,* 181 Ill. 2d 436, 441 (1998); *Berg*, 831 F.3d at 429. When determining whether a provision is ambiguous, the court "read[s] the policy in light of 'the insured's reasonable expectation and the policy's intended coverage.' " *Berg*, 813 F.3d at 429 (*quoting Gen. Star Indemn. Co. v. Lake Bluff Sch. Dist. No. 65*, 354 Ill. App. 3d 118, 127 (2004)).

Courts have held that an appraisal clause is analogous to an arbitration clause, "which is enforceable in a court of law, and with which a court may compel compliance." *Lundy v. Farmers Group, Inc.,* 322 Ill. App. 3d 214, 218 (2nd Dist. 2001) (*quoting Beard v. Mount Carroll Mut. Fire Ins. Co.,* 203 Ill. App. 3d 724, 727 (5th Dist. 1990)). The trial court must determine whether the parties' dispute is covered by the particular clause. *Lundy,* 322 Ill. App. 3d at 219 (finding that an appraisal was not appropriate because it was necessary to determine whether defendant misrepresented the quality of repair parts to its policyholders).

Analysis

At the forefront of the parties' argument is whether this issue involves a coverage dispute, for the Court to determine, or a loss dispute, for an appraiser to assess. Northstar contends that PIIC is responsible for covering losses that Northstar incurred when plaintiff's policy was in effect, specifically damage from the April 2014 storm. PIIC disputes the full amount of the losses claimed as well as the extent of the property damage, claiming that the damage occurred after its policy coverage ended. Importantly, there is no dispute over the fact that the April 2014 storm is a covered event. The only dispute is over when certain damages occurred. The insurance policy at issue requires an appraisal if the parties disagree as to the amount of loss, defined as accidental loss or damage.

Plaintiff's attempt to present this as primarily a coverage issue is unpersuasive. Plaintiff unsuccessfully argues that the amount of loss is not at issue, asserting that certain damages are not covered because they occurred after the policy ended. Regardless of plaintiff's claims, the heart of the issue relates to the amount of damages sustained during the April 2014 storm. Plaintiff's complaint at law even highlights the issue of damages. Specifically, one of the remedies plaintiff seeks is a judicial determination "that the JS Held Report is the controlling damage estimate as it best lays out the damage caused by the April 12, 2014 storm." (Dkt. 1 at 1) (emphasis added). Accordingly, plaintiff's own representation is that there are differing opinions about the damage caused by the April 2014 storm, and it asks the Court to apply a particular damage estimate. Plaintiff, however, fails to acknowledge this request when it argues that the damages are secondary to a determination of coverage. Instead, plaintiff uses semantics to imply that the only issue here is whether PIIC is responsible for damage caused by the storms after its policy expired.

The Court is unconvinced by plaintiff's argument. There is no dispute over the policy period or terms, only over whether certain losses were actually sustained during the coverage period. Contrary to plaintiff's assertion, "whether the insurance contract exists" (Resp. at 3) is not the primary matter to resolve. Once the dates of the damage are determined, plaintiff's coverage obligations should be able to be easily assessed. *See Paradise Plaza Condo. Ass'n, Inc. v. Reinsurance Corp. of New York*, 685 So. 2d 937, 941 (Fla. Dist. Ct. App. 1996) (finding that the issue of the order in which the issues of damages and coverage are to be determined respectively by arbitration and the court should be left within the discretion of the trial judge).

Case law relied upon by plaintiff, while providing some insight as to the boundaries of an appraisal, is distinguishable from the facts here. In *Lytle v. Country Mut. Ins. Co.*, the issue was whether costs associated with complying with building ordinances were covered under the plaintiff's policy. (2015 IL App (1st) 142169, Para. 27.) Accordingly, the court found that the issue was a coverage dispute rather than a dispute over the amount of a loss. *Id.* While the losses were known in *Lytle*; here, the full extent of damages from the April 2014 storm remain in dispute.

Another case relied upon by PIIC, *Lundy v. Farmers Group, Inc.,* is also distinguishable. In *Lundy,* the appraisal policy was designed to resolve disputes over the amount of loss; however, the case required a determination of whether the defendant made misrepresentations to its policyholders as to the quality of repair parts that it would pay for under its policies. *Lundy,* 322 Ill.App. 3d at 219. Given the deceptive practices alleged in *Lundy*, the court determined that the dispute was not covered by the appraisal clause that was designed to resolve disputes over the amount of loss.

The court in *Spearman Industries Inc. v. St. Paul Fire and Mutual Ins. Co.,* was asked to resolve a dispute over whether the insurance policy covered wear and tear. 109 F.Supp. 2d 905, 907 (N.D. Ill. 2000). The facts of the case in *Spearman* led the court to determine that the causation issue was a matter for the court to decide. Specifically, the court found that the dispute was not over the amount of property loss or the value of the property, but instead over the cause of the damage. *Id.* The case here, however, does involve a dispute over the amount of loss in April 2014.

The present case is more analogous to *201 N. Wells, LLC v. F&G Ins. Co.,* in which the court ruled that the appraiser provision should be enforced and "that determining the cause of the damages is inherent to the appraiser's duties." No. 1:00-cv-03855 (N.D. Ill. Jan. 24, 2001) (order granting motion to stay proceedings pending appraisal). In *201 N. Wells*, the court found that the appraiser should determine the amount of loss caused by water damage, as well as the amount of loss caused by asbestos, mold, and fungi, because the parties disagreed as to the value of the damages. *Id*. The court in *201 N. Wells* supports what the Iowa Court of Appeals held when it stated that "appraisers must determine what the amount of 'loss' is, which often requires consideration of causation… Causation is an integral part of the definition of loss[.]" *N. Glenn Homeowners Ass'n v. State Farm Fire & Cas. Co.,* 854 N.W.2d 67, 71 (Iowa Ct. App. 2014).

The appraisal provision here is unambiguous with respect to its purpose, namely to resolve disagreements over the amount of loss (i.e. damage). Whether other damage was already present or occurred after the April 2014 storm are factors for the appraiser to take into consideration when making his assessment. Plaintiff attempts to minimize the role of the appraiser by insinuating that an appraiser can only determine the value of damage and nothing further. As the court found in *201 N. Wells, LLC,* however, it seems inherent to an appraiser's duty when assessing damage to assess what caused the damage. *See 201 N. Wells, LLC,* 1:00-cv-03855 (N.D. Ill. Jan. 24, 2001) (holding that appraisers should determine the causation of certain damages); *See also CIGNA Ins. Co. v. Didimoi Prop. Holdings, N.V.,* 110 F.Supp. 2d 259, 264 (D. Del. 2000) (holding that "an appraiser's assessment of the 'amount of loss' necessarily includes a determination of the cause of the loss, as well as the amount it would cost to repair that which was lost."). For example, if the damage was already present before the storm, an appraiser may not need to include it in a valuation of loss assessment following the April 2014 storm. If an appraiser was unable to distinguish between various damages when determining the loss from a given event, an assessment of the

"amount of loss" would be futile. Accordingly, an appraiser's role often times also involves determining the source of the damage so that the appraiser knows whether the damage should be included in a loss estimation. *See N. Glenn Homeowners Ass'n.,* 854 N.W.2d at 71.

The relevant portion of the appraisal provision states that if parties "disagree on the value of the property or the amount of **'loss'** [defined as accidental loss or damage], either may make a written demand for an appraisal of the **'loss'**." (Motion at Ex. A, pg. 15). No matter how plaintiff attempts to reword the problem, there is a disagreement as to the amount of loss (damage) from the April 2014 storm. Plaintiff's position that the damages occurred after its coverage ended does not automatically render this a coverage dispute. Accordingly, the Court finds that the appraisal provision should be enforced so that a determination as to the amount of damage during PICC's policy period can be made. As the appraisal provision states, plaintiff still has the ability to deny the claim after an appraisal.

Conclusion

The Court finds that based on the circumstances of this case, including the plain language of the policy, the appraisal provision governs here. Accordingly, defendant's motion to compel an appraisal is granted. The matter is stayed pending the completion of the appraisal. The parties are to file a joint status report by 12/16/16 regarding the status of the appraisal.

Date: October 18, 2016 **/s/ Michael T. Mason**