CAUSE NO. 2021-70308

KYLE J. MCPIKE, *Plaintiff,*	§	**IN THE DISTRICT COURT OF**
v.	§	**HARRIS COUNTY, TEXAS**
HOMEOWNERS OF AMERICA INSURANCE COMPANY, *Defendant.*	§	**215TH JUDICIAL DISTRICT**

ORDER GRANTING PLAINTIFF'S MOTION TO DISQUALIFY DEFENDANT'S APPRAISER KEVIN HROMAS

ON THIS DAY, the Court considered Plaintiff Kyle J. McPike's Motion to Disqualify Defendant's Appraiser Kevin Hromas ("Motion to Disqualify"). After considering the Motion, any response thereto, the arguments of counsel, if any, and other related pleadings, the Court is of the opinion that Plaintiff's Motion should be GRANTED. It is therefore,

ORDERED, ADJUDGED, AND DECREED that Plaintiff Kyle J. McPike's Motion to Disqualify is hereby in all things GRANTED. The Court specifically finds that Appraiser Kevin Hromas is DISQUALIFIED from acting as an appraiser in this case. The Court further finds Kevin Hromas is biased against Plaintiff, and its representatives, that Kevin Hromas acted in a biased and unfair manner, in violation of the policy. Based on Kevin Hromas's bias and based on his unfair and bad faith approach to the appraisal, Mr. Hromas is not a **qualified** appraiser.

IT IS FURTHER ORDERED, ADJUDGED, AND DEGREED, that Mr. Hromas may not continue as appraiser in this case due to his bias, and that Defendant must designate a **qualified** appraiser within ten (10) days following entry of this order.

Signed:
1/4/2024
11:57 AM

Honorable Judge Presiding

10/20/2023 4:34 PM
Marilyn Burgess - District Clerk Harris County
Envelope No. 80830394
By: Brenda Espinoza
Filed: 10/20/2023 4:34 PM

CAUSE NO. 2021-70308

KYLE J. MCPIKE, *Plaintiff,*	§	**IN THE DISTRICT COURT OF**
v.	§	**HARRIS COUNTY, TEXAS**
HOMEOWNERS OF AMERICA INSURANCE COMPANY, *Defendant.*	§	**215th JUDICIAL DISTRICT**

PLAINTIFF'S OPPOSED MOTION TO DISQUALIFY DEFENDANT'S APPRAISER KEVIN HROMAS

COMES NOW, Plaintiff Kyle McPike, and files this Opposed Motion to Disqualify Defendant's Appraiser Kevin Hromas due to his disqualifying bias, lack of neutrality, and bad faith conduct, as expressly prohibited by the insurance policy.

I. Certificate of Conference

On October 4, 2023, undersigned counsel sent the attached letter to counsel for Defendant, making them aware of the egregious conduct of their biased appraiser Kevin Hromas, and providing them with the opportunity to voluntarily withdraw him from the process.[1] Defendant ignored that correspondence. Undersigned followed-up with counsel for Defendant on October 18, 2023, by email.[2] Defendant ignored that correspondence as well, and to-date has not responded to Plaintiff. Plaintiff must therefore assume Defendant opposes the relief sought herein and in further breach of the policy wishes to continue to utilize a biased appraiser who is disqualified per the plain language of the policy.

[1] *See* Exhibit A, Letter to Defendant's counsel regarding Kevin Hromas dated October 4, 2023.
[2] *See* Exhibit B, Email to Defendant's counsel dated October 18, 2023.

II. Summary of the Issue

Appraisal is a tool used to determine "the amount of the insured's loss." It does so without regard to liability or coverage. The policy in this case requires the appraisers be "competent, independent, impartial, and disinterested" and further requires that they are "unbiased … and act fairly, without bias and in good faith."[3] Here, instead of acting as an unbiased, impartial appraiser, as required by the policy, Defendant's biased appraiser Kevin Hromas has pre-determined (without ever actually evaluating the amount of Plaintiff's loss) that based on *his* interpretation of a policy provision (outside the scope of appraisal), and *his* interpretation of an appellate decision in an unrelated matter (even further outside the scope of appraisal), that, in his words, Mr. McPike "won't get a dime more than what HOA has already paid."[4] Based that, Mr. Hromas has refused to further work on the appraisal. He has further levied insults against undersigned counsel stating that undersigned is "pissing in the wind" related to this claim. Mr. Hromas's conduct, particularly his pre-determination that Mr. McPike "won't get a dime more" and refusal to do his job as an appraiser, is sufficient to demonstrate that he is biased, partial, and acting in bad faith. His further insults to undersigned counsel as "pissing in the wind" put his conduct beyond the pale. Mr. Hromas is disqualified from acting as an appraiser in this matter.

III. Facts and Procedural History

On February 15 and 16, 2021, Kyle McPike's ("Plaintiff") property sustained severe damages as a result of leakage from frozen pipes following Winter Storm Uri. Plaintiff timely filed a claim with its insurer, Defendant Homeowners of America Insurance Company ("Defendant"). Defendant, wrongfully, and in breach of the policy and the Texas Insurance Code, determined that the damages were subject to the policy's $10,000 sublimit (which applies only to the perils of

[3] *See* Defendant's Motion for Summary Judgment, Exhibit A, Policy at p. 14.
[4] *See* Exhibit C, Affidavit of David Poynor and Exhibit C-1 thereto.

"discharge" and "overflow" but not "leakage,") and issued payment only as to that amount, denying coverage for the remaining amounts.

Plaintiff filed the instant suit on October 26, 2021, and Defendant answered on November 29, 2021. On March 2, 2022, Defendant filed its Motion for Summary Judgment, arguing that it had no liability as a matter of law because it paid the full amounts owed due to the application of the $10,000 sublimit.[5] On March 28, 2022, Plaintiff filed its cross-motion for Summary Judgment, arguing that the sublimit did not apply to leakage, that Defendant wrongfully applied the policy provision, and was in breach of both the policy and the applicable provisions of the Texas Insurance Code.[6] On April 4, 2022 this Court Denied Defendant's Motion for Summary Judgment,[7] and accordingly on May 16, 2022, Granted in all things Plaintiff's Motion for Summary Judgment, finding that Defendant wrongfully applied the sublimit, and was in breach of the policy and the Texas Insurance Code as a matter of law, and that Plaintiff's claim was covered in full and not subject to a sublimit.[8]

Following the Court's finding that Defendant violated the terms and conditions of the policy and the Texas Insurance Code, Defendant sought to invoke the appraisal provision of the policy to ascertain the amount of Plaintiff's loss, which would establish damages owed to Plaintiff as a result of Defendant's breach of the policy. *See TMM Investments, Ltd. V. Ohio Cas. Ins. Co.*, 730 F.3d 466, 472 (5th Cir. 2013) ("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."). Here, liability has been determined by Court Order. The sole question remaining is how much (over and above the $10,000 sublimit) Defendant owes Plaintiff, both for

[5] *See* Exhibit D, Defendant's Motion for Summary Judgment
[6] *See* Exhibit E, Plaintiff's Cross-Motion for Summary Judgment
[7] *See* Exhibit F, Order Denying Defendant's Motion for Summary Judgment
[8] *See* Exhibit G, Order Granting Plaintiff's Cross-Motion for Summary Judgment

the covered damages under the policy, as well as for Defendant's breach of the contract and violations of the Texas Insurance Code.[9]

i. Brief History of Appraisal In Texas

"Appraisal" is a term of art used to describe an alternative dispute resolution mechanism that is virtually ubiquitous in Texas insurance policies. *See State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 888-89 (Tex. 2009)("Virtually every property insurance policy for both homeowners and corporations contains a provision specifying appraisal as a means of resolving disputes about the 'amount of loss' for a covered claim."). Appraisal, being a creature of contract, is governed by the language of the policy. *In re: Universal Underwriters of Tex. Ins. Co.*, 345 S.W.3d 404, 407 (Tex. 2011). Appraisal is used to determine the amount of the insured's loss. "The policy directs the appraisers to decide the 'amount of loss,' not to construe the policy or decide whether the insurer should pay." *Johnson*, 290 S.W.3d at 890. "[T]he policy requires each party to select a 'competent, disinterested appraiser,' not a lawyer or insurance expert." *Id*.[10]

Essentially, upon a disagreement as to the amount of the loss, either party to the contract may invoke the appraisal provision. In that instance, both sides are required to designate "competent" or "disinterested" appraisers (as shown below the particular policy's language can vary), who attempt to determine the amount of loss, irrespective of coverages or liability. *Id*. If they fail to agree, then they may choose, or if they cannot agree, a Court with jurisdiction may appoint, a third person, called an Umpire, and agreement by any two of the three is binding as to all parties as to the amount of the loss. *Id*. at 887-888.

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[9] Appraisal in this case would only partially determine Plaintiff's damages, and would specifically be limited to breach of contract. The Court and/or jury would determine the remaining damages owed for Defendant's insurance code violations.

[10] Notably, Mr. Hromas is a lawyer (though not a licensed attorney) and holds himself out to be an insurance expert. *See Mt. Hawley Ins. Co. v. JBS Parkway Apartments, LLC*, 2020 WL 6821329 *5 (Order Granting in Part Plaintiff's Motion to Exclude Expert Testimony of Kevin Hromas as "improper".). *See also* CV of Kevin Hromas stating "Mr. Hromas is a retained expert in insurance litigation through-out the US" attached hereto as Exhibit H.

ii. The Applicable Appraisal Provision in This Case

Insurers in Texas are able to craft their own appraisal provisions, creating differences in the language governing the process. Here, Defendant's appraisal language goes beyond the standard-form Texas appraisal language. The standard appraisal language, contained in most policies, is as follows:

> **Appraisal**. If you and we fail to agree on the amount of loss, either one can demand that the amount of loss be set by appraisal. If either makes a written demand for appraisal, *each shall select a competent, disinterested appraiser*. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire … The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss.

Johnson, 290 S.W.3d. at 887-888 (emphasis added).

The policy at issue in this case, goes further than the standard form language, requiring the parties appoint "**qualified**" appraisers, and defining "**qualified**" beyond merely "competent and disinterested" as the standard form requires:

> **E. 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 **qualified** appraiser and notify the other of the appraiser's identity within 15 days after receiving a written request from the other. The two appraisers will choose a **qualified** umpire… The two appraisers will separately set the amount of loss, stating the actual cash value and loss to each item, if the appraisers fail to agree, they will submit their differences to the umpire. …
>
> An Itemized decision agreed to by any two of these three and filed with us will set the amount of loss. Such award shall be binding on you and us. Within thirty (30) days following receipt of a signed award, we will pay the award according to the terms of the policy subject to the deductible less any prior payments on the claim.
>
> The following conditions apply to appraisal:

a. The term "**qualified**" means *competent, independent, impartial, and disinterested appraiser* or umpire. The appraisers and umpire should be competent with respect to identification of damage, and insofar as they are *unbiased and free of control*, to arrive at their own evaluation of the loss. The appraisers and umpire should have knowledge in identifying damage and act *fairly, without bias and in good faith*. The umpire, appraisers, and their employers, may not have an interest in the property that is the subject of the claim or have a financial interest that is conditioned on the outcome of the appraisal or the claim. The umpire may not be a relative or employee, may not have made or received substantial referrals of business to or from you or us (or representatives of you or us).

…

g. The appraisers and umpire are not authorized to determine coverage, exclusions, forfeiture provisions, conditions precedent, or any other contractual issues that may exist between you and us, and the appraisal decision is not binding on these issues.[11]

iii. Kevin Hromas is Overtly Biased

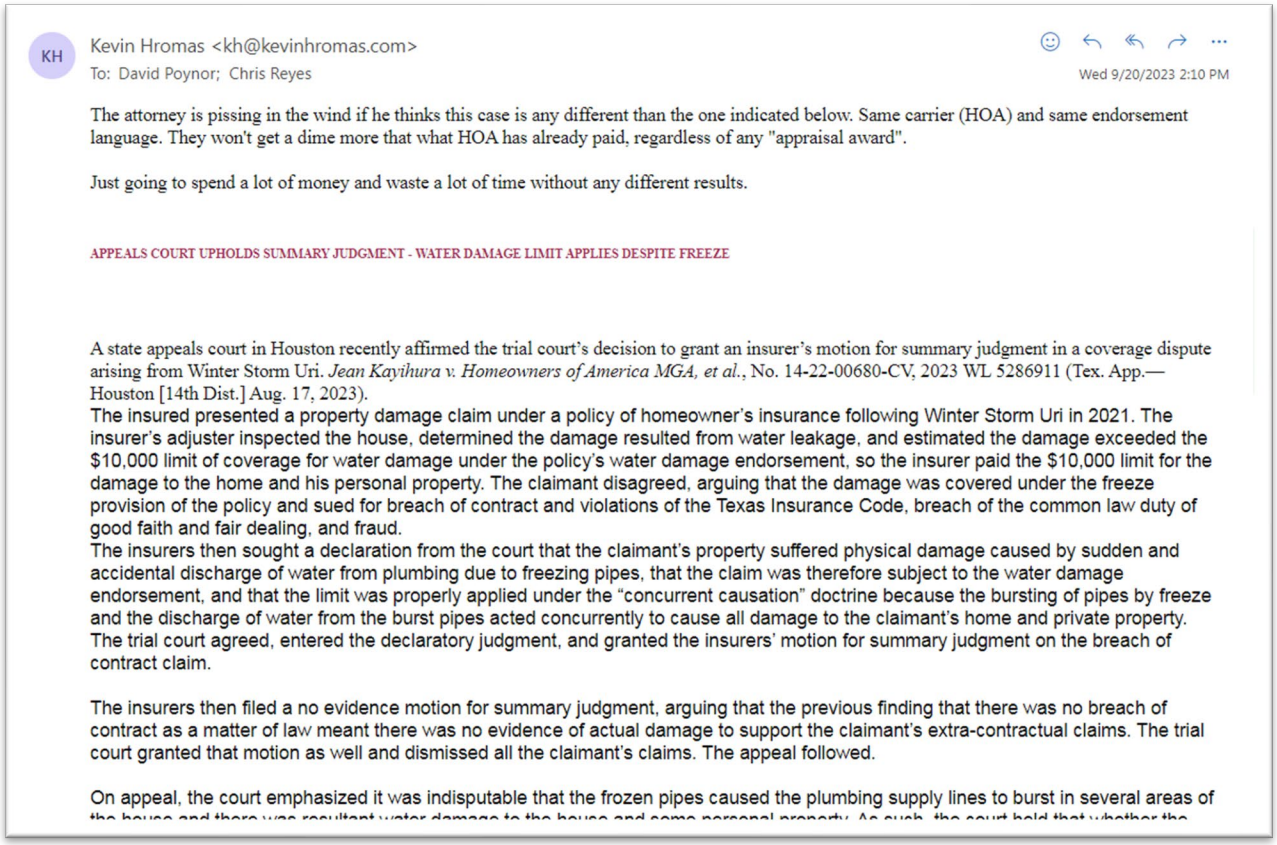
The Texas Supreme Court admonished that a party's chosen appraiser should not be "a lawyer or insurance expert." *Id*. Defendant's chosen appraiser, Kevin Hromas, is both a lawyer and a self-professed insurance expert.[12] That, in and of itself, would not necessarily disqualify Mr. Hromas from acting as Defendant's appraiser under this policy's controlling language. Nor does the fact that Mr. Hromas has been hired by Defendant numerous times to act as their appraiser serve to disqualify him under this policy. *See Holt v. State Farm Lloyds*, 1999 WL 261923 *10 (N.D. Tex. 1999)("While the mere fact that one appointed by the insurer as an appraiser has acted in a similar capacity on other occasions for the insurer, does not, as a matter of law, disqualify such an appraiser….").

However, Mr. Hromas's conduct in *this* appraisal, in particular his flagrant disregard for the policy's prohibition against deciding issues of coverage, his overt statements against the

[11] *See* Defendant's Motion for Summary Judgment, Exhibit A, Policy p. 14-15 (emphasis original as to "**qualified**" and added as to definitions).
[12] *See* Exhibit H, Hromas CV.

insured (and insured's counsel), and the overall biased manner in which he is conducting this appraisal demonstrate that he is not **qualified** to act as an appraiser in this case.

To-date, Mr. Hromas has never evaluated or determined the amount of Plaintiff's loss.[13] Moreover, Mr. Hromas, an appraiser who is not authorized to determine coverage or contractual issues, has expressly pre-determined that, based on *his* view of the coverage and contractual issues, and *his* reading of an appellate decision, Mr. McPike "won't get a dime more than what HOA has already paid…".[14] On September 20, 2023, after essentially refusing to work on the appraisal, Mr. Hromas sent the following email to Plaintiff's appraiser David Poynor[15]:



KH

Kevin Hromas <kh@kevinhromas.com>

To: David Poynor; Chris Reyes

Wed 9/20/2023 2:10 PM

The attorney is pissing in the wind if he thinks this case is any different than the one indicated below. Same carrier (HOA) and same endorsement language. They won't get a dime more that what HOA has already paid, regardless of any "appraisal award".

Just going to spend a lot of money and waste a lot of time without any different results.

APPEALS COURT UPHOLDS SUMMARY JUDGMENT - WATER DAMAGE LIMIT APPLIES DESPITE FREEZE

A state appeals court in Houston recently affirmed the trial court's decision to grant an insurer's motion for summary judgment in a coverage dispute arising from Winter Storm Uri. *Jean Kayihura v. Homeowners of America MGA, et al.*, No. 14-22-00680-CV, 2023 WL 5286911 (Tex. App.—Houston [14th Dist.] Aug. 17, 2023).

The insured presented a property damage claim under a policy of homeowner's insurance following Winter Storm Uri in 2021. The insurer's adjuster inspected the house, determined the damage resulted from water leakage, and estimated the damage exceeded the $10,000 limit of coverage for water damage under the policy's water damage endorsement, so the insurer paid the $10,000 limit for the damage to the home and his personal property. The claimant disagreed, arguing that the damage was covered under the freeze provision of the policy and sued for breach of contract and violations of the Texas Insurance Code, breach of the common law duty of good faith and fair dealing, and fraud.

The insurers then sought a declaration from the court that the claimant's property suffered physical damage caused by sudden and accidental discharge of water from plumbing due to freezing pipes, that the claim was therefore subject to the water damage endorsement, and that the limit was properly applied under the "concurrent causation" doctrine because the bursting of pipes by freeze and the discharge of water from the burst pipes acted concurrently to cause all damage to the claimant's home and private property. The trial court agreed, entered the declaratory judgment, and granted the insurers' motion for summary judgment on the breach of contract claim.

The insurers then filed a no evidence motion for summary judgment, arguing that the previous finding that there was no breach of contract as a matter of law meant there was no evidence of actual damage to support the claimant's extra-contractual claims. The trial court granted that motion as well and dismissed all the claimant's claims. The appeal followed.

On appeal, the court emphasized it was indisputable that the frozen pipes caused the plumbing supply lines to burst in several areas of

[13] *See* Exhibit C, Affidavit of David Poynor and Exhibit C-1 thereto.

[14] Notably, Mr. Hromas seems to be substituting his own judgement as an unlicensed lawyer, for that of this honorable Court, who has already ruled on this very issue.

[15] *See* Exhibit C, Affidavit of David Poynor and Exhibit C-1 thereto.

Mr. Hromas, who is required by the policy to be "independent, impartial, and disinterested" and required by the policy to "act fairly, without bias, and in good faith" further stated that "the attorney [undersigned counsel] is *pissing in the wind* if he thinks this case is any different than the one indicated below. Same carrier (HOA) and same endorsement language."[16]

Without reading the email further, these two sentences demonstrate that Mr. Hromas is disqualified from acting as an appraiser in this case. First, there is no credible argument Mr. Hromas is acting "fairly, without bias, and in good faith" while insulting undersigned counsel as "pissing in the wind." That statement, standing alone, demonstrates his disqualifying bias. Moreover, and equally as concerning is the fact that Mr. Hromas, who is a lawyer but not a licensed attorney, [17] appears to be relying upon and citing to an entirely unrelated case, regarding application of an endorsement in that case to support his pre-determined decision as to the outcome of this appraisal. Whether an endorsement does or does not apply, relates specifically to "coverage, exclusions, conditions, forfeiture provisions, conditions precedent," or "other contractual issues" that may exist between the parties, which the policy specifically excludes from the appraisal process.

Reading further, Mr. Hromas's egregious statements continue with his assertion that "They [Plaintiff Kyle McPike] won't get a dime more than what HOA has already paid, regardless of any 'appraisal award.'"[18] This too, is sufficient in and of itself to disqualify Mr. Hromas. Similar to Mr. Hromas's insult to undersigned counsel as "pissing in the wind" there is no credible argument that Mr. Hromas is acting fairly, impartially, neutrally, or in good faith with his pre-determined view that Mr. McPike "won't get a dime more than what HOA has already paid" especially in light

[16] *Id* (emphasis added).
[17] Undersigned searched the Texas Bar's registry of licensed attorneys and Mr. Hromas's name was not present as an attorney licensed in this state.
[18] *Id*.

of the fact that he has never performed his own evaluation of the amount of Plaintiff's loss, which is his *only* job under the policy.

Next, Mr. Hromas, who is an unlicensed lawyer, says "A state appeals court in Houston recently affirmed the trial court's decision to grant an insurer's motion for summary judgment in a coverage dispute arising from Winter Storm Uri."[19] He then includes language regarding application of a $10,000 freeze sublimit in that case. Purportedly, this is in support of his belief that Undersigned counsel is "pissing in the wind" and that Mr. McPike "won't get a dime more than what HOA has already paid." Regardless, this citation is extremely concerning. First, because it directly relates to coverage, contractual issues, and matters completely separate from the appraisal per the policy's own requirements. Second, because it demonstrates that Mr. Hromas is considering matters far beyond the amount of Plaintiff's loss due to leakage, all to support his pre-conceived position that undersigned counsel is "pissing in the wind" and that Mr. McPike "won't get a dime more than what HOA has already paid."

Mr. Hromas is not qualified to act as an appraiser in this case. Moreover, any subsequent award that is the result of Mr. Hromas's involvement will be incurably tainted due to his overt bias and consideration of matters of coverage and contract, well outside the authority given under the policy.

IV. Arguments & Authorities

It is well-settled that Courts in Texas have "inherent authority to manage their dockets." *In re Mesa Petroleum Partners*, 538 S.W.3d 153, 159 (Tex. App. – El Paso 2017). Numerous courts in Texas have heard motions to strike or disqualify appraisers, with none noting that the requested relief is outside the Court's authority to grant. *See ex. Devonshire Real Estate & Asset*

[19] *See* Exhibit C, Affidavit of David Poynor and Exhibit C-1 thereto

Management, LP v. Am. Ins. Co., 2013 WL 1212430 (N.D. Tex. 2013), *Holt v. State Farm Lloyds*, 1999 WL 261923 (N.D. Tex 1999). In fact, some courts of appeal have held that where a party, upon obtaining evidence showing an appraiser's disqualification, fails to raise the issue until after an award is entered, that party may have waived their right to bring the challenge later. *Allison v. Fire Ins. Exchange*, 98 S.W.227, 253 (Tex. App. – Austin 2002)(holding that a party must challenge an appraiser prior to entry of an appraisal award, or otherwise may waive their right to challenge the award once entered on those grounds).

The insurance policy governs the requirements regarding appraisers. *Devonshire Real Estate & Asset Mgmt. v. Am. Ins. Co.*, 2013 WL 1212430 *1 (N.D. Tex. 2013). A party moving to strike an appraiser must present evidence of partiality or personal interest. *Allison v. Fire Ins. Exch.*, 98 S.W.3d 227, 255 (Tex. App. – Austin 2002), *see also Am. Cent. Ins. Co. v. Terry*, 298 S.W.658, 662 (Tex. Civ. App. 1927)(noting in *dicta* that the fact that the appraiser had been selected by the insurer "many times before" was insufficient on its own to establish partiality "in the absence of some act or conduct tending to exhibit his serving the insurer's interest as a partisan would.").

Here, the requirements as listed in the policy go beyond those in a typical Texas standard form policy and set forth a higher standard of impartiality and neutrality than the standard appraisal clause language. Compare the appraisal clause language at issue in *Devonshire*, requiring merely a "competent and disinterested" appraiser versus the language applicable in this case, defining **qualified** as "competent, independent, impartial, and disinterested." While perhaps under the standard language, Mr. Hromas is competent, and because he purportedly does not have a financial interest in the outcome, satisfies the requirement of "disinterested" as Texas Courts have interpreted it, the inquiry does not end there. Here, because of this particular policy's language, the Court must further consider whether Mr. Hromas is "independent" "impartial" "unbiased" and

acting "fairly, without bias, and in good faith" a considerably higher and more stringent standard than the typical Texas appraisal clause.

This language is clear. In order for an appraiser to be **qualified**, they must at all times be competent, independent, impartial, and disinterested. They must be unbiased, and at all times act fairly and in good faith. The lack of any one of these qualities, according to the policy, is itself a sufficient condition to render that appraiser not **qualified** under this policy's clear language. Here, Mr. Hromas's unequivocal statement that Plaintiff "will not get a dime more than HOA has already paid", his insult to undersigned counsel as "pissing in the wind," with his extremely improper reliance on case law to discuss coverage issues far afield of his authority granted by the policy demonstrate that he is not impartial, that he is biased, that he has pre-determined the outcome of this process, and that he is not acting in good faith. The fact that Mr. Hromas has refused to further work on the appraisal based on his subjective belief that undersigned counsel is "pissing in the wind" and his subjective belief that Mr. McPike "won't get a dime more than what HOA has already paid" further underscores his bad faith conduct. Simply put, no appraiser acting in an unbiased, neutral, impartial, good faith manner would make these statements or take these positions. That Mr. Hromas does, with blatant and callous disregard for the policy's requirements, disqualifies him from further involvement in this claim.

i. *Any award entered with Mr. Hromas's continued involvement will be invalid.*

In Texas, appraisal awards are upheld unless one of three circumstances exists: (1) the award was made without authority; (2) the award was the result of fraud, accident, or mistake; or (3) the award was not made in substantial compliance with the terms of the contract. *TMM Investments, LTD. v. Ohio Cas. Ins. Co.*, 730 F.3d 466, 472 (5th Cir. 2013). Here, any award entered with the involvement of Mr. Hromas (bearing his signature or not), would satisfy conditions (1)

and (3) and be invalid. Here, it is clear that not only is Mr. Hromas considering coverage issues, endorsement issues, and caselaw, but he is *arguing* those issues to Plaintiff's appraiser. This policy is clear, the appraisers "are not authorized to determine coverage, exclusions, conditions, forfeiture provisions, conditions precedent, or any other contractual issues that exist between you and us" meaning Mr. Hromas's overt consideration and argument surrounding these issues clearly go beyond the authority given him by the policy. Moreover, because of Mr. Hromas's blatant bias, as evidenced by his statements that Undersigned is "pissing in the wind" and that Mr. McPike "won't get a dime more than HOA already paid" he is not a qualified appraiser as defined by the policy. Therefore, any award involving an appraiser who is not qualified cannot be "in substantial compliance with the policy."

Thus, judicial economy would require disqualification of Mr. Hromas and an order requiring Defendant select an unbiased, impartial, and fair appraiser is warranted. Otherwise, the parties will continue to waste further resources setting an invalid award aside at the completion of the process. An order requiring Defendant select an unbiased, impartial, and fair appraiser would ensure the process may proceed, thus satisfying the goal of appraisal and conserving precious judicial resources.

V. Conclusion & Prayer

Defendant, in writing this policy, intended to craft an appraisal provision with a higher and stricter standard for appraiser conduct than the typical policy language. Here, the parties intended, as evidenced by the contract's language, that any appraisal be conducted by neutral, non-biased, disinterested individuals acting in good faith and considering *only* the damages to the property. Instead of abiding by that language, Defendant's designated a clearly biased appraiser, who by making such crass and abhorrent statements has disqualified himself from further involvement in

this appraisal. Mr. Hromas's continued presence would serve only to waste the parties' time and resources, as any subsequent award would be incurably tainted, and invalid on its face.

Mr. Hromas, based on his interpretation of matters having nothing to do with the amount of Plaintiff's loss, has (1) refused to further act as an appraiser; (2) pre-determined that Plaintiff "will not get a dime more than what HOA has already paid;" and (3) demonstrated an obvious bias against Mr. McPike and his representatives, who Mr. Hromas unequivocally believes are "pissing in the wind." If this conduct does not constitute bias, partiality, and acting in bad faith, then such words have no meaning under Texas law.

Respectfully submitted,

GREEN KLEIN WOOD & JONES

By: */s/ Hunter M. Klein*
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon all counsel of record in accordance with the Texas Rules of Civil Procedure on this 20th day of October 2023.

Ronald Hornback
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ATTORNEYS FOR DEFENDANT

/s/ Hunter M. Klein
HUNTER M. KLEIN

Automated Certificate of eService

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Andrea Galvan on behalf of Hunter Klein
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Envelope ID: 80830394
Filing Code Description: Motion (No Fee)
Filing Description: Plaintiff's Opposed Motion to Disqualify
Status as of 10/23/2023 8:45 AM CST

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