

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MYRTLE ROLAND,

Plaintiff,

v.

ALLSTATE VEHICLE AND
PROPERTY INSURANCE COMPANY,

Defendant.

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CIVIL ACTION NO. 4:24-cv-01710

**ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY’S RESPONSE AND
OPPOSITION TO PLAINTIFFS’ MOTION TO COMPEL APPRAISAL AND
ABATEMENT**

Defendant Allstate Vehicle and Property Insurance Company (“Allstate” and/or “Defendant”) files its Response and Opposition to Plaintiff Myrtle Roland (“Plaintiff’s”) Motion to Compel Appraisal and Abatement.

Plaintiff Myrtle Roland, through her counsel, has invoked appraisal in relation to a homeowners’ insurance claim for damages due to leaking pipes. Because Allstate disputes coverage of Plaintiff’s alleged damages and serious causation issues presented by this claim, appraisal would be a waste of Allstate and Plaintiff’s resources and time. Consequently, Allstate opposes appraisal of this claim and would ask the Court to deny the appraisal. If the Court chooses to nonetheless allow the appraisal to proceed, Allstate asks the Court to require Plaintiff to first provide Allstate with the previously requested Sworn Proof of Loss and repair documentation from damage related to several prior homeowners claims with various other insurance companies for damages strikingly similar to the damages claimed for this claim.

I.
FACTUAL BACKGROUND

1. Allstate issued a homeowners policy to Plaintiff Myrtle Roland insuring the residential property located at 7707 Chaseview Drive, Missouri City, Texas 77489 (the “Property” or “dwelling”) under policy number 429025105, effective March 18, 2022 through March 18, 2023 (the “Policy”). *See* Exhibit A.

2. The Policy has limits for the dwelling in the amount of \$240,000 with a \$2,400 deductible. *Id.*

3. The relevant portions of the Policy state:

A. DUTIES AFTER LOSS

3. What You Must Do After A Loss

In the event of a loss to any property that may be covered by this policy, **you** must:

- a) promptly give **us** or **our** agent notice. Report any theft to the police as soon as possible.
- b) protect the property from further loss. Make any reasonable repairs necessary to protect it. Keep an accurate record of any repair expenses.
- c) separate damaged from undamaged personal property. Give **us** a detailed list of the damaged, destroyed or stolen property, showing the quantity, cost, actual cash value and the amount of loss claimed.
- d) give **us** all accounting records, bills, invoices and other vouchers, or certified copies, which **we** may reasonably request to examine and permit **us** to make copies.
- e) produce receipts for any increased costs to maintain **your** standard of living while **you** reside elsewhere, and records supporting any claim for loss of rental income.
- f) as often as **we** reasonably require:
 - 1) show **us** the damaged property. **We** have a right to reasonable and safe opportunities to view and inspect the loss as often as necessary, unimpeded by actions of **you** or others, including, but not limited to, civil, governmental or military

authorities, that prevent **us** from viewing and inspecting the loss. **We** may require **you** to accompany **us** when **we** conduct these activities.

2) at **our** request, submit to examinations under oath, separately and apart from any other person defined as **you** or **insured person** and sign a transcript of the same.

3) produce representatives, employees, members of the **insured person's** household or others to the extent it is within the **insured person's** power to do so; and

g) Upon **our** request, send to us your signed sworn proof of loss within 91 days of the date of **our** request. This statement must include the following information:

1) the date, time, location and cause of loss;

2) the interest **insured persons** and others have in the property, including any encumbrances;

3) any other insurance that may cover the loss;

4) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;

5) at **our** request, the specifications of any damaged **building structure** or other structure;

6) the estimated or actual cost to repair or replace the property stolen or damaged by the loss with materials of like kind and quality;

7) the amount **you** have actually spent to repair or replace the property stolen or damaged by the loss; and

8) in the event that **you** give **us** a signed proof of loss, and after submitting that to **us**, **you** determine that you want to include a claim for additional damage or loss, **you** must submit to **us** a supplemental proof of loss which identifies the amount of the additional loss for each item damaged or stolen.

We have no duty to provide coverage under this section if **you**, an **insured person**, or a representative of either fail to comply with items a) through g) above, and this failure to comply is prejudicial to **us**.

* * *

d) If after we receive your proof of loss as described in paragraph c) above, you and we are still not able to agree on the amount of loss, then either party may make a written demand for an appraisal, as described in **Section I Conditions, Appraisal**. If this demand for appraisal is made before an action is filed against us in a court of competent jurisdiction, then the appraisal must occur before a suit can be filed against us. If the demand for appraisal is made after an action has been filed against us in a court of competent jurisdiction, then the parties agree to ask the court to abate the further proceeding of that action until the appraisal is completed and a determination of the amount of loss is made as described in **Section I Conditions, Appraisal**.

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8. Appraisal

If you and we fail to agree on the amount of loss, either party may make written demand for an appraisal. Upon such demand, each party shall select a competent and impartial appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire then an umpire will be appointed in the following manner:

a) You or we will request the American Arbitration Association (AAA) to select an umpire at:

**American Arbitration Association
Case Filing Services
Attn: Allstate Texas Appraisal
1101 Laurel Oak Road Ste 100
Voorhees, New Jersey 08043
Email: casefiling@adr.org
(with subject matter as "Allstate Texas Appraisal")**

b) Only if AAA advises you and us in writing that it cannot appoint an umpire may we then jointly request a judge of a district court in the judicial district where the residence premises is located to select an umpire. A judge of a district court does not include a commissioner or a judge of a county court at law, or a justice court, a municipal court, a probate court, or of a commissioner's court.

The appraisers shall then determine the amount of the loss, stating separately the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to you and us, the

amount agreed upon shall be the amount of the loss. If they cannot agree, they will submit their differences to the umpire. A written award agreed upon by any two will determine the amount of the loss. Each party will pay the appraiser it chooses, and equally bear expense for the umpire and all other appraisal expenses.

If the appraisal process is initiated, the appraisal award shall be binding on you and us concerning the amount of the loss. We reserve the right to deny the appraisal award in part or in its entirety based upon the lack of coverage under the policy or failure to satisfy policy terms.

* * *

4. On about May 23, 2023, Plaintiff submitted a claim to Allstate for damages as a result of leaking/busted pipes. The claim was assigned claim number 0714984515 (“claim”). Plaintiff claimed that four rooms sustained water damage, but the pipes were fixed.

5. On May 23, 2023, Allstate acknowledged Plaintiff’s claim requesting, among other things, Plaintiff to complete and return a Proof of Loss, estimates for the alleged damages, including providing additional information about who the plumber was, their name, the company, or request for receipts associated with the repairs made on the Property, however, Plaintiff failed to provide any of the requested information pursuant to the Policy’s requirements.

6. On or about June 2, 2023, Allstate performed a field inspection of the property and determined that the loss has been on going, and the water leak in the ceiling had been long-term and therefore was not a covered loss under sudden and accidental damages.

7. On or about June 5, 2023, Allstate sent a letter to Plaintiff denying coverage under Coverages A, B, and C because the policy does not cover wear and tear, gradual deterioration, or inherent vice.

8. On or about June 28, 2023, Allstate received a letter of representation from Plaintiff’s counsel.

9. On or about July 28, 2023, Allstate received Plaintiff’s “Formal Notice of Claim” with a new date of loss of June 5, 2023.

10. On or about July 11, 2023, Allstate acknowledged Plaintiff’s counsel’s letter of representation directing future correspondence to Plaintiff’s counsel and requested a Proof of Loss and continued to request information as to prior plumbing repairs and receipts.

11. On August 16, 2023, the property was inspected again by Allstate and photograph taken at the property showed new drywall in place and Plaintiff alleged pipes were fixed.

12. During Allstate’s investigation of this claim, it was also noted that the following similar claims have been made by Plaintiff on the Property:

Date	Carrier	Claim Number	Details of Loss	Policy Type
12/26/2022	Texas Fair Plan Association	1164113	Water Damage to Drywall, Carpet, and wood floors	Homeowners
04/13/2022	Allstate	0665892634	Water Damage in Activity Room in bathroom	Homeowners
1/1/2022	American Security	00103449689	Water Damage Busted Pipe	Homeowners
12/31/2021	American Security	00201464765	Water Damage Busted Pipe	Homeowners
08/02/2021	Texas Fair Plan Association	1144326	Water Damage from Busted Pipe: Damage to Wall	Homeowners
04/09/2021	American Bankers Insurance Company of Florida	00103131554	Water Damage: Busted Pipe in Garage	Homeowners
02/18/2021	Capitol Indemnity Corp	00207462	Pipe Burst during winter storm	Homeowners

6. On September 18, 2023, Allstate responded to Plaintiffs' counsel "Formal Notice of Claim." At that time, Allstate requested estimates and reports pertaining to the claim and requested that Mrs. Roland execute a Proof of Loss.

7. On October 20, 2023, Allstate received the Plaintiff "Demand for Settlement" in the amount of \$103,942.43 plus \$10,000 in attorney's fees less the deductible and prior payment.

8. On October 24, 2023, Allstate rejected to Plaintiff's Demand for settlement with request for appraisal because it is Allstate's position that that there is no coverage for this loss under the policy.

9. On or about March 26, 2024, Plaintiff filed her Original Petition, which was subsequently removed to this Court by Allstate.

10. On or about May 30, 2024, Plaintiff filed her Motion for Appraisal and Abatement.

11. Allstate reiterated its request for the sworn Proof of Loss and documentation pertaining to the Plaintiff's numerous prior claims.

12. Allstate intends to issue subpoenas to the Plaintiff's insurance companies for information and documentation pertaining to the five (5) prior claims for plumbing/water damage.

II. **ARGUMENT AND AUTHORITIES**

13. By demanding appraisal and filing her Motion to Compel Appraisal and Abatement, Plaintiff is attempting to avoid addressing the overarching and serious coverage issues in this case, the seemingly duplicative damage claimed against Allstate for long-term water/leak damage. Plaintiff's Motion ignores the key policy requirement that the parties must "fail to agree on the amount of loss" before either party can invoke appraisal.

14. 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.

See Dike v. Valley Forge Ins. Co., 797 F. Supp. 2d 777, 782 (S.D. Tex. 2011) citing *Lundstrom v. United Servs. Auto. Ass'n-CIC*, 192 S.W.3d 78, 87 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). Appraisal is not a means to resolve a dispute about the amount of loss when there is a serious dispute over coverage. *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 889 (Tex. 2009) (finding appraisals are a means to resolve disputed about the amount of loss for a covered claim).

15. Allstate specifically requested Plaintiff to provide documents from the prior seven (7) water damage claims evidencing repairs to the property before further pursuing appraisal for the current water damage claim.

16. The only information Allstate has at this point is that Plaintiff reported a water damage claim for the seventh time within the past four years, that has since been repaired, without any support as to who repaired it, when it was done, and how much said repairs cost, made by Plaintiff at the same address. Because Plaintiff has failed to provide the requested documentation, Allstate intends to issue subpoenas for this information from the insurance companies listed in the chart above.

17. Allstate has denied payments for the long-term water/leak damages and damages associated with prior claims because it's earlier requests for additional information regarding repairs and even prior requests for a sworn proof of loss which is a pre-requisite under Allstate's policy has been met with resistance. Even if the parties were to submit this matter to Appraisal, it would not be helpful to resolving the dispute because these damages are not covered under Allstate's policy. Allstate should not be compelled to incur the expense of Appraisal when Appraisal would not resolve the claim or address the disputes between the parties.

18. Alternatively, if the Court nonetheless determines Appraisal should proceed, Allstate will ask the Court to first require the Plaintiffs to present Allstate with a completed, sworn

Proof of Loss and documentation evidencing prior repairs for damages claimed from the noted previous insurance claims.

III.
PRAYER

WHEREFORE, Allstate Vehicle and Property Insurance Company respectfully requests that this Court deny Plaintiffs' Motion to Compel Appraisal and Abatement. Allstate Vehicle and Property Insurance Company prays that the Court grant the requested relief, its reasonable and necessary attorney's fees, costs of court, and such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

/s/Tiffany A. Au

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**ATTORNEYS FOR DEFENDANT
ALLSTATE VEHICLE AND PROPERTY
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CERTIFICATE OF SERVICE

This is to certify that on the 24th day of July, 2024, a copy of this document was served to all Counsel of Record via electronic notice to:

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/s/ Tiffany A. Au

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