IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

NASHVILLE COMMUNICATIONS, INC.,	)	
Plaintiff,	)	
v.	)	**No. 3:24-cv-01020**
	)	**Judge Aleta A. Trauger**
AUTO-OWNERS (MUTUAL) INSURANCE COMPANY,	)	**JURY DEMANDED**
Defendant.	)	

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW the Plaintiff, Nashville Communications, Inc. ("NashComm"), by and through counsel, and for its Memorandum in Support of Motion for Partial Summary Judgment, respectfully submits the following:

I. INTRODUCTION

This property insurance case stems from an unpaid Appraisal Award. After NashComm and Auto-Owners (Mutual) Insurance Company ("Owners") agreed to proceed with an appraisal of a windstorm loss, the appointed Appraisal Panel determined the amount of loss by considering *only* the scope of covered damage that Owners agreed had been sustained. To accurately assign a loss valuation to that undisputed scope of covered damage, the Appraisal Panel first determined the necessary means and methods of making the required repairs and then valued the loss. All issues decided by the Appraisal Panel are appraisable under Tennessee law, and the Appraisal Award is binding and enforceable.

After the Appraisal Award was issued, Owners asserted the legal argument that the Appraisal Panel made causation and/or coverage determinations as part of the appraisal and has refused to pay the Award. This is nothing more than a straw man argument with no basis in law or fact. Through its Rule 30(b)(6) designee, Owners itself agrees that the Appraisal Panel made no causation or coverage determinations as part of the appraisal:

> Q. Sitting here today, ***Owners cannot identify any coverage or causation determinations*** that were made in this appraisal award, correct?
>
> A. ***Correct.***

(SOF, ¶ 28) (emphasis added).

Owners' refusal to pay the Appraisal Award based on alleged (but wholly unsupported) causation and coverage disputes is nothing more than a thinly veiled attempt to circumvent this Court's prior rulings in similar cases. In the end, Owners is displeased with the status of Tennessee appraisal law, namely that scope of repair and means and methods of repair are within the purview of appraisal panels, and it is straining to create legal arguments in the present case as an opportunity to express its displeasure.

Because the Appraisal Panel appraised the Loss without making any determinations as to causation or coverage, the Appraisal Award is binding and enforceable as a matter of law. NashComm respectfully asks for entry of an Order that the Appraisal Award issued in this case is binding and enforceable, setting the amount of the Loss and thereby eliminating the need for proof on the same at trial.

II. STATEMENTS OF FACT[1]

A. THE POLICY.

Owners issued an insurance policy, Policy No. 194619-80173260-22 (the "Policy"), to NashComm with a term of May 29, 2022 to May 29, 2023. (SOF, ¶ 1). The Policy is a binding contract that insured NashComm's commercial property located at 330 Plus Park Boulevard, Nashville, Tennessee 37217, as Location 0001 – Building 0001 (the "Property"). (SOF, ¶¶ 2, 3). The Policy provided insurance coverage for "direct physical loss of or damage to" the Property resulting from a "covered cause of loss." (SOF, ¶ 4). Relevant here, wind is a "covered cause of loss" under the Policy. (SOF, ¶ 5).

B. THE LOSS & CLAIM ADJUSTMENT.

On March 3, 2023, a windstorm event struck the Property, resulting in damage to the building at the Property (the "Loss"). (SOF, ¶ 6). The Loss occurred during the term of the Policy, and NashComm made a claim to Owners for the damage caused by the Loss. (SOF, ¶¶ 7, 8). Owners acknowledges that the Loss caused wind damage to the Property, which it contended was "limited to displacement of one section of rubberized membrane covering the parapet wall along the north roof edge and one metal joint covering the east parapet wall …" (SOF, ¶¶ 9, 10). Owners estimated the amount of the Loss to be $108,291.16 (replacement cost value) and $102,070.23 (actual cash value), and it then issued payment based on its estimate. (SOF, ¶¶ 11, 12). NashComm and Owners disagreed concerning the amount of the Loss. (SOF, ¶ 13).

[1] NashComm has filed contemporaneously herewith its Statement of Undisputed Material Facts in Support of Motion for Partial Summary Judgment ("SOF"), the contents of which are incorporated herein by reference. NashComm provides the following narrative, with citation to the SOF, for the convenience of the Court.

C. THE APPRAISAL.

Because of the disagreement concerning the amount of loss, NashComm invoked the appraisal provision under the Policy. (SOF, ¶ 14). The Policy provides:

> 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.

(SOF, ¶ 15) (bold emphasis in original | underline/italic emphasis added).

Owners agreed to proceed with an appraisal of the Loss. (SOF, ¶ 16). The term "loss," according to Owners, means "damage to the structure or property caused by a covered peril." (SOF, ¶ 17). NashComm appointed Zachary Baker as its appraiser. (SOF, ¶ 18). Owners then appointed Paul Vitolins as its appraiser, and the appraisers agreed to use Stuart MacDiarmid as umpire. (SOF, ¶¶ 19, 20).

D. THE APPRAISAL AWARD.

On April 30, 2024, appraiser Zachary Baker and umpire Stuart MacDiarmid determined the total amount of the Loss to be $230,710.95—less $43,241.85 in depreciation—resulting in an actual cash value of the Loss as $187,469.10 (the "Appraisal Award"). (SOF, ¶ 21). Critically, this Appraisal Award was based on the scope of covered damage that Owners conceded had been suffered. (SOF, ¶¶ 32-34). After the Appraisal Award was issued, NashComm requested that Owners issue payment consistent with the Award (less deductible and prior payments), but Owners refused. (SOF, ¶¶ 22, 23).

E. OWNERS' STATED BASES FOR REFUSING TO PAY THE APPRAISAL AWARD.

In May 2024, Owners sent a denial letter to NashComm, including its alleged reasons for refusing to pay the Appraisal Award. (SOF, ¶ 23; *see also* ***Exhibit 4*** to SOF). Owners asserted the legal argument that the Appraisal Panel exceeded its authority by making coverage and/or causation determinations. (SOF, ¶ 24) (*See also infra*). In addition, Owners quoted Policy exclusions in its denial letter that it alleged apply to preclude such payment:

64010 (12-10)

CAUSES OF LOSS - SPECIAL FORM

A. COVERED CAUSES OF LOSS
When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:
1. Excluded in Section **B.**, Exclusions; or
2. Limited in Section **C.,** Limitations that follow.

B. EXCLUSIONS
1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

* * *

g. Water

(1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
(2) Mudslide or mudflow;

* * *

(4) Water under the ground surface pressing on, or flowing or seeping through:

(a) Foundations, walls, floors or paved surfaces;
(b) Basements, whether paved or not; or
(c) Doors, windows or other openings; or

* * *

(SOF, ¶ 37).

Owners, however, agrees that none of the above exclusions apply to the Loss:

Q. Mr. Churchman [c]ites the causes of loss, special form section. Do you see that?
A. I do.
Q. And he includes the exclusions section, correct?

A. Correct.
Q. And he has Section B(1)g.· Do you see that?
A. I do.
Q. As far as Owners is concerned, has Nashville -- has NashComm made any claims for damages due to water from a flood?
A. No.
Q. Surface water?
A. No.
Q. Waves?
A. No.
Q. A tidal wave?
A. No.
Q. Tsunami?
A. Not that I'm aware of.
Q. A tide?
A. No.
Q. Tidal water?
A. No.
Q. An overflow of any body of water?
A. No.
Q. Spray from any of these?
A. No.
Q. Mud slide?
A. No.
Q. Mud flow?
A. No.
Q. What about water from under the ground surface?
A. No.

(SOF, ¶ 38).

Owners also testified:

Q. Can Owners explain how any of these exclusions would apply to this particular claim?
A. I cannot, no.

(SOF, ¶ 39).

In the same letter, Owners also quoted the limitations that it contends apply to the Loss:

C. LIMITATIONS
The following limitations apply to all policy forms and endorsements, unless otherwise stated.
1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

* * *

c. *The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:*

(1) *The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or*

(2) *The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.*

(SOF, ¶ 40).

Similar to the testimony on the inapplicability of the exclusions, Owners testified that it has "no opinion" as to whether the Property suffered damage due to the melt of ice or snow:

> Q. Okay. Sitting here today, does Owners know whether or not or have any opinion as to whether or not NashComm -- the NashComm building suffered any damage due to the melt of ice and snow during the policy period that we're here about?
>
> A. No opinion.

(SOF, ¶ 41).

Accordingly, the question before the Court is whether there is a material *factual* dispute that the Appraisal Panel made determinations of coverage and/or causation. As fully demonstrated below, there is no dispute on this issue, as both parties agree that no such determinations were made.

F. THE APPRAISAL PANEL'S POSITIONS.

Umpire Stuart MacDiarmid and appraiser Zachary Baker (the two members of the Appraisal Panel who signed the Appraisal Award) did not consider questions of causation or coverage under the Policy. Umpire MacDiarmid affirmed that he "did not engage in any considerations of policy coverage or liability as part of the appraisal." (SOF, ¶ 30). Nor did he "engage in any cause of loss determinations as part of the appraisal." (SOF, ¶ 31). Rather, in determining the amount of loss, Mr. MacDiarmid "considered only the scope of damage that Owners agreed had sustained damage" and "determined the necessary means and methods of

repairing the same." (SOF, ¶ 32). Mr. MacDiarmid specifically explained his consideration of the appropriate means and methods of repair to the Appraisal Panel as follows:

> [I]t was very clear that ***the areas at the agreed wind damage were indeed wet*** and with the current condition of the roof, ***attempted repairs would lead to a domino effect of damaging the surrounding materials while attempting to manipulate***. The other option would have been a partial replacement of the roof, but that would have left migrating moisture to seep back into the new materials and certainly would not be pre-loss condition.

(SOF, ¶ 33) (emphasis added).

Appraiser Zachary Baker agrees; he testified that he did not consider any direct physical loss beyond that of which Owners conceded and agreed to. (SOF, ¶ 34 ("Q. Did you ever develop any opinions that something other than what the carrier conceded was direct physical loss actually suffered direct physical loss? | A. I didn't consider it."). Even Owners' appraiser, Paul Vitolins, agrees that an appraisal panel is permitted to determine the scope of the damage, as well as the proper means and methods of repair, as part of an appraisal of a loss. (SOF, ¶ 35 ("Q. And do you agree that an appraisal panel can determine the scope of the damage that they are appraising? | A. Yes, I do."); *see also id*., ¶ 36 ("Q. Do you agree that an appraisal panel is allowed to determine the proper means and methods of repair? | A. Yes, I do.")).

G. OWNERS' ADMISSIONS.

In sharp contrast to its seemingly built-for-litigation argument that the Appraisal Panel considered coverage or causation as part of the appraisal, Owners cannot identify any facts to support this defense:

> Q. Can you show me any discussion in here [the Appraisal Award] or mention in any respect whatsoever where the appraisal panel discusses cause of damage?
> A. There is none that I'm aware of.

(SOF, ¶ 25).

Likewise, Owners testified that no coverage determinations were made by the Appraisal Panel:

> Q. Can you show me anywhere in this appraisal award where the appraisal panel discusses or makes coverage decisions?
> A. No.
> Q. No coverage determinations have been considered. Correct?
> A. Correct.

(SOF, ¶¶ 26-27).

Owners ultimately admitted that it could not identify ***any*** coverage or causation determinations made by the Appraisal Panel:

> Q. Sitting here today, Owners cannot identify any coverage or causation determinations that were made in this appraisal award, correct?
> A. Correct.

(SOF, ¶ 28).

What is also peculiar, and contradictory to the position taken by Owners in its legal arguments, is that Owners agrees that an estimator must determine the extent of the damage in order to determine the cost of repairing or replacing damaged property:

> Q. How does Owners determine what the cost of repairing or replacing the lost or damaged property is without determining the extent of the damage?
> A. Without?
> Q. Yeah.
> A. You don't.
> Q. You have to determine the extent of the damage –
> A. Correct.
> Q. -- in order to determine the cost of repairing or replacing the lost or damaged property, correct?
> A. Correct.

(SOF, ¶ 29).

III. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.

56(a). Under Fed. R. Civ. P. 56, a party may demonstrate that there are no such disputed material facts by:

> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

See Fed. R. Civ. P. 56(c).

Moreover, "[p]artial summary judgment is appropriate to isolate and dispose of factually unsupported claims or defenses," and Tennessee district courts have stated that Rule 56 "should be interpreted in a way that allows it to accomplish this purpose." *Crounse Corp. v. Vulcan Materials Co.*, 956 F. Supp. 1384, 1385-86 (W.D. Tenn. 1997) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986)). Finally, "[i]f the record taken in its entirety could not convince a rational trier of fact to return a verdict in favor of the nonmoving party, the motion must be granted." *Id.* at 1386.

IV. LAW & ARGUMENT

The Court should enter an Order holding that the Appraisal Award is binding and enforceable as a matter of law. This action would then proceed to trial on NashComm's claim for breach of contract, as well as its claims for extracontractual and consequential damages—without the need for proof on the amount of the Loss itself.

A. APPRAISALS IN TENNESSEE RESOLVE AMOUNT OF LOSS DISPUTES.

Tennessee courts have recognized the validity of appraisal provisions in insurance contracts for more than 120 years. *Harowitz v. Concordia Fire Ins. Co.*, 168 S.W. 163, 165 (Tenn. 1914) ("Provisions for appraisement in a policy of insurance providing a speedy and reasonable method of estimating and ascertaining the sound value and damage are valid …"); *Hickerson &*

Co. v. Ins. Cos., 33 S.W. 1041 (Tenn. 1896) (holding an appraisal provision in an insurance policy valid); *see also Bard's Apparel Mfg., Inc. v. Bituminous Fire & Marine Ins. Co.*, 849 F.2d 245, 249 (6th Cir. 1988) ("Under Tennessee law, an appraisal provision in an insurance policy is valid.") (citing *Hickerson*); *Khushi P'ship v. Berkshire Hathaway Homestate Ins. Co.*, No. 3:22-cv-00265, 2023 U.S. Dist. LEXIS 6602, at *7 (M.D. Tenn. Jan. 13, 2023) (same).

1. Appraisals Are Not Intended to Resolve Questions of Coverage—Rather, They Involve "Amount of Loss" Disputes.

Appraisal is not intended to resolve questions concerning coverage under an insurance policy, and no such coverage determinations were made in the appraisal of the present Loss.[2] *See Merrimack Mut. Fire Ins. Co. v. Batts*, 59 S.W.3d 142, 152 (Tenn. Ct. App. 2001) (stating that an appraisal clause "does not vest the appraisers with the authority to decide questions of coverage and liability[.]"). However, it is black-letter law in Tennessee that an appraisal is conclusive and binding on the parties as to the amount of loss. *See Artist Bldg. Partners v. Auto-Owners Mut. Ins. Co.*, 435 S.W.3d 202, 218 (Tenn. Ct. App. 2013) (stating that "insurance policy provided that if

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[2] This Court has previously explained why an appraisal must consider at least some element of causation:

> [A]ppraisers must always consider causation, at least as an initial matter. An appraisal is for damages caused by a specific occurrence, not every repair a [covered property] might need. When asked to assess hail damage, appraisers look only at damage caused by hail; they do not consider leaky faucets or remodeling the kitchen. When asked to assess damage from a fender-bender, they include dents caused by the collision but not by something else. Any appraisal necessarily includes some causation element, because setting the 'amount of loss' requires appraisers to decide between damages for which coverage is claimed from damages caused by everything else.

Khushi P'ship, 2023 U.S. Dist. LEXIS 6602, at *12-13 (quoting *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 893 (Tex. 2009); *see also Michael v. State Farm Fire & Cas. Co.*, No. 1:24-cv-01046-JDB-jay, 2024 U.S. Dist. LEXIS 128330, at *7-8 (W.D. Tenn. May 24, 2024) (same).

Owners agrees with the Court: it testified that when attempting to determine the cost of repairing or replacing damaged property, one must determine the extent of the damage. (SOF, ¶ 29).

the Insurer and the insured disagreed as to 'the amount of loss,' then either party could demand an appraisal of the loss, and a decision by the panel as to the amount of loss would be binding."); *Thomas v. Standard Fire Ins. Co.*, No. E2015-01224-COA-R3-CV, 2016 Tenn. App. LEXIS 117, at *13 (Ct. App. Feb. 17, 2016) (affirming trial court's holding that "[a]n umpire's authority is narrowly tailored based upon the authority contractually delegated to the umpire. All determinations made by an umpire on matters within that scope of authority are binding on all parties.").

Tennessee federal courts agree that appraisal is appropriate to resolve questions concerning the amount of loss but not of coverage. *See, e.g.*, *Michael v. State Farm Fire & Cas. Co.*, No. 1:24-cv-01046-JDB-jay, 2024 U.S. Dist. LEXIS 128330, at *6-7 (W.D. Tenn. May 24, 2024) ("Generally speaking, appraisal provisions are meant to settle disputes between the insured and the insurer regarding the amount of a given loss."); *Cox Paradise, LLC v. Erie Ins. Exch.*, No. 1:20-cv-01068-JDB-jay, 2023 U.S. Dist. LEXIS 244556, at *4 (W.D. Tenn. May 5, 2023) ("Enforcement of an appraisal provision answers one question: how much it will cost to fix the damage. Defendant correctly points out that an appraisal does not answer the more detailed question of whether the damage is covered by the insurance policy."); *Ingram v. State Farm Fire & Cas. Co.*, No. 1:21-cv-75, 2021 U.S. Dist. LEXIS 245457, at *7 (E.D. Tenn. Dec. 14, 2021) ("In the absence of an agreement to the contrary, authority to decide disputes of liability and coverage lies in the courts, and not with the appraisers.") (citing *Merrimack*, 59 S.W.3d at 153; *Harowitz*, 168 S.W. at 165; *Pear Tree Props. v. Acuity*, No. 3:16-cv-00551, 2017 U.S. Dist. LEXIS 234303 (M.D. Tenn. Sep. 22, 2017)); *Smith v. State Farm Fire & Cas. Co.*, No. 1:21-cv-01076-JDB-jay, 2021 U.S. Dist. LEXIS 245386, at *5 (W.D. Tenn. Oct. 27, 2021) (stating that insurance policy permits appraisals concerning "amount of loss" disputes and reasoning that "[a]n 'appraiser's authority is limited to the authority granted in the insurance policy or granted by some other

express agreement of the parties.'") (quoting *Merrimack*, 59 S.W.3d at 152); *First Choice Prop. & Dev., LLC v. Travelers Pers. Ins. Co.*, No. 1:21-cv-02371-STA-jay, 2021 U.S. Dist. LEXIS 165921, at *8 (W.D. Tenn. Sep. 1, 2021) (stating that the appraisal process "would control any dispute over the amount of loss."); *State Farm Fire & Cas. Co. v. Harper*, No. 3:20-cv-00856, 2021 U.S. Dist. LEXIS 245383, at *6 (M.D. Tenn. Aug. 13, 2021) ("[a]bsent an express clause in the insurance contract, 'appraisers have no power to decide coverage or liability issues.'") (citing *Merrimack*, 59 S.W.3d at 152-53)).

2. A Determination of the "Amount of Loss" Includes Consideration of the Proper Scope of Repairs and the Means and Methods of Repair.

A determination of the amount of a loss necessarily includes consideration of the appropriate scope of repairs and the means and methods of repair, which are appraisable in Tennessee. This Court has reasoned that "defining the 'scope of the work' is inherent in determining the 'amount of loss.' Regardless of whether one estimate recommends tearing down the structure and one does not, they are still competing estimates that differ as to the amount of loss." *State Farm Fire & Cas. Co. v. Harper*, No. 3:20-cv-00856, 2021 U.S. Dist. LEXIS 245383, at *7 (M.D. Tenn. Aug. 13, 2021). This is because "a dispute over scope of the work is nothing more than a dispute over the monetary value of returning the insured premises to its pre-loss condition. Whether the property needs to be repaired or replaced is ultimately a disagreement over the amount of loss."[3] *Id.* at *8; *see also Pear Tree Props. v. Acuity*, No. 3:16-cv-00551, 2017 U.S.

[3] This Court also noted that "[m]ultiple jurisdictions have agreed with this approach on the scope of an appraisal's authority," which is that the "extent of work required to repair the damage' caused by the covered event 'are factual questions that fall squarely within the scope of the policy's appraisal clause." *Pear Tree*, 2017 U.S. Dist. LEXIS 234303, at *5-6 (citing *Harvey Prop. Mgmt. Co., Inc. v. Travelers Indem. Co.*, No. 2:12-CV-01526-SLG, 2012 U.S. Dist. LEXIS 164565, 2012 WL 5488898, at *5 (D. Ariz. Nov. 6, 2012) (holding an appraisal is appropriate under Arizona law when the disagreement "focuses on the extent of the insurer's liability, not over the meaning of the insurance policy itself"); *Coates v. Erie Ins. Exchange*, 79 Va. Cir. 440, at *3 (2009) (same applying Virginia law); *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 891 (Tex. 2009) (applying Texas law, holding that an appraisal was appropriate for determining which undamaged portions

Dist. LEXIS 234303, at *5 (M.D. Tenn. Sep. 22, 2017) (stating that "if it is undisputed that the loss was caused by a covered event in the insurance policy, questions of 'the extent of work required to repair the damage' caused by the covered event 'are factual questions that fall squarely within the scope of the policy's appraisal clause.'") (quoting *Pottenburgh v. Dryden Mut. Ins. Co.*, 55 Misc. 3d 775, 48 N.Y.S.3d 885, 888 (Sup. Ct. 2017)) (collecting cases); *Travelers Indem. Co. of Am. v. Ambaji, Inc.*, No. 3:23-cv-00451, 2025 U.S. Dist. LEXIS 2629, at *9 (M.D. Tenn. Jan. 6, 2025) (noting that "the Court in *Morrow* recognized that where parties agree that the policy covers some damage but dispute 'the extent and the amount of the loss', appraisal is appropriate.") (quoting *Morrow v. State Farm Fire & Cas. Co.*, 592 F. Supp. 3d 672, 676 (E.D. Tenn. 2022)) (*see infra*).

Other federal district courts in Tennessee are in accord. *See Morrow v. State Farm Fire & Cas. Co.*, 592 F. Supp. 3d 672, 676 (E.D. Tenn. 2022) ("[the insured] contends that there is additional loss unaccounted for in State Farm's estimate, while State Farm contends that its initial payment represents the full value of the damage caused by the May 2020 storm. The Court fails to see how State Farm's argument in this instance that it is denying coverage for certain repairs in [the insured's] estimate is any different than a dispute about the scope of work a repair requires…"). Consequently, there is an abundance of authority for the proposition that the determination of the proper scope of repairs, as well as the appropriate means and methods of repair, are appraisable.

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of the roof would need to be replaced to fix the damage caused by the event); *CIGNA Ins. Co. v. Didimoi Prop. Holdings*, 110 F. Supp. 2d 259 (D. Del. 2000) (same regarding appraiser's authority, applying Delaware law)).

B. THE APPRAISAL AWARD IS BINDING AND ENFORCEABLE IN THIS CASE, AND IT HAS SET THE AMOUNT OF LOSS.

Here, because the Appraisal Panel reached its Appraisal Award through the consideration of only the appropriate means and methods of repair for the damages agreed to by Owners, the Appraisal Award issued in this case is binding and enforceable. Although Owners has asserted the legal argument that the Appraisal Panel improperly engaged in causation and coverage determinations, these arguments are belied by the testimony of Owners' Fed. R. Civ. P. 30(b)(6) designee (which reflects Owners' "position on the topic"[4]), as well as the members of the Appraisal Panel. (SOF, ¶¶ 28, 30-31, 34).

Owners testified:

- It "cannot identify any coverage or causation determinations" made in the appraisal of this Loss. (SOF, ¶ 28).

[4] "Rule 30(b)(6) requires a corporation to designate a person that can testify about information known or reasonably available to the corporation. Although the designated person does not need personal knowledge of the facts to which he [or she] testifies, he [or she] must be prepared by the corporation so that he [or she] can adequately testify as to the corporation's position." *Nacco Materials Handling Grp., Inc. v. Lilly Co.*, 278 F.R.D. 395, 400-01 (W.D. Tenn. 2011) (citing *FDIC v. Butcher*, 116 F.R.D. 196, 199 (E.D. Tenn. 1986) (stating that a corporation must make a good-faith effort to designate persons having knowledge of the matter sought and to prepare those persons); *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989) (recognizing that Rule 30(b)(6) requires a corporation not only to produce persons to testify with respect to the designated matters, but also to prepare them so that they may give complete, knowledgeable, and binding answers on behalf of the corporation.). Indeed, "[t]he testimony of a Rule 30(b)(6) deponent represents the knowledge of the corporation, not the individual deponent, and thus the testimony of a Rule 30(b)(6) witness is different from that of a 'mere corporate employee;' the Rule 30(b)(6) deponent does not give his own personal opinions but instead presents the corporation's 'position' on the topic[.]'" *Richardson v. Rock City Mech. Co., LLC*, No. 3-09-0092, 2010 U.S. Dist. LEXIS 16647, at *16-17 (M.D. Tenn. Feb. 24, 2010) (citing *United States v. Taylor*, 166 F.R.D. 356, 360-61 (M.D.N.C. 1996)); *see also Gutierrez v. CogScreen*, LLC, No. 17-02378-JPM-tmp, 2017 U.S. Dist. LEXIS 219880, at *4-5 (W.D. Tenn. Nov. 13, 2017) (same); *United States ex rel. Martin v. Life Care Ctrs. of Am.*, No. 1:08-cv-251, 2015 U.S. Dist. LEXIS 178700, at *7-8 n.1 (E.D. Tenn. Apr. 29, 2015) ("Rule 30(b)(6) permits 'designated persons without personal knowledge to testify on behalf of a corporation on matters within the corporation's knowledge.'') (quoting *Cooley v. Lincoln Elec. Co.*, 693 F. Supp. 2d 767, 791 (N.D. Ohio 2010)).

- "There is none that [Owners is] aware of" when asked to point out consideration of causation in the Appraisal Award. (SOF, ¶ 25).
- "No," Owners is not able to identify any instances where the Appraisal Panel made coverage decisions. (SOF, ¶ 26).

Umpire Stuart MacDiarmid explained:

- He did not engage in any causation determinations as part of the appraisal. (SOF, ¶ 31).
- He did not engage in any considerations of coverage as part of the appraisal. (SOF, ¶ 30).
- He only considered the scope of damage that Owners itself agreed had sustained damage and determined the necessary means and methods of repairing the same. (SOF, ¶ 32).

Appraiser Zachary Baker likewise testified that he did not consider any direct physical loss beyond that of which Owners conceded and agreed to. (SOF, ¶ 34). **Appraiser Paul Vitolins** agreed that an appraisal panel is permitted to determine the scope of damage and the means and methods of repair as part of an appraisal. (SOF, ¶¶ 35, 36).

Additionally, when umpire MacDiarmid explained his thought processes concerning the appropriate means and methods of repair (which all involved agree is appraisable in Tennessee, *see supra*), he stated that "the areas at the agreed wind damage were indeed wet and with the current condition of the roof, attempted repairs would lead to a domino effect of damaging the surrounding materials while attempting to manipulate." (SOF, ¶ 33). He also considered other means of repair but explained that those "certainly would not be pre-loss condition." (*Id.*).

In other words, the Appraisal Panel considered only the scope of damage agreed to by Owners and determined the proper means and methods of repair to set the amount of the Loss. The two members of the Appraisal Panel who signed the Appraisal Award stated that they did not make

causation or coverage determinations, and Owners' very own testimony confirms the same. Instead, as umpire MacDiarmid explained, they considered the appropriate means and methods of repair. Owners agreed that this was permissible, and its own appraiser did, too. In the end, there are no material factual disputes; the Appraisal Award is binding and enforceable, and it has thus set the amount of loss.

V. CONCLUSION

For the foregoing reasons, NashComm respectfully seeks entry of an Order that the Appraisal Award is binding and enforceable, setting the amount of loss as a matter of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and exact copy of the foregoing MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT has been mailed electronically to all counsel of record on this the 25th day of August 2025:

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