UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES – GENERAL

Case No.: 8:25-cv-01540-FWS-ADS Date: October 6, 2025
Title: K4 Dev LLC v. ACE American Insurance Company *et al.*

Present: **HONORABLE FRED W. SLAUGHTER, UNITED STATES DISTRICT JUDGE**

Damian Velazquez for Rolls Royce Paschal	N/A
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff:	Attorneys Present for Defendant:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL APPRAISAL (ARBITRATION) AND TO STAY THE CASE [15]

In this case, Plaintiff K4 Dev, LLC alleges claims against Defendant ACE American Insurance Company related to an insurance policy's coverage of water damage. (*See generally* Dkt. 1-2 ("Complaint" or "Compl.") ¶¶ 1-20.) Before the court is Plaintiff's Motion to Compel Appraisal (Arbitration) and to Stay the Case. (Dkt. 15-1 ("Motion" or "Mot.").) Defendant opposes the Motion. (Dkt. 18 ("Opp.").) Plaintiff filed a reply in support of the Motion. (Dkt. 22 ("Reply").) The court held a hearing on the Motion on October 2, 2025. (Dkt. 31.) Based on the state of the record, as applied to the applicable law, the Motion is **GRANTED**.

I. Background

A. Summary of Complaint's Allegations

Plaintiff is the owner of a hotel property located at 1616 Market Street, Denver, Colorado. (Compl. ¶ 2.) Defendant is a business engaged in marketing, issuing, underwriting, selling, billing, adjusting, and issuing insurances policies as well as paying insurance benefits. (*Id.* ¶ 3.) Defendant issued a policy to Plaintiff that insured Plaintiff for certain physical losses while the hotel was under construction. (*Id.* ¶ 4.) For example, the policy covered water damage from roof leaks and "Delay in Opening" losses caused by water damage. (*Id.*) While the hotel was under construction, it suffered rainwater damage due to incomplete roofing systems on both May 29, 2021, and July 6, 2021 ("Water Events"). (*Id.* ¶ 8.) The water

damaged the interior finishes and furnishings from the 6th floor down to the basement, including 32 guestrooms. (*Id.*)

Once construction was finished, Plaintiff and its experts determined that the covered water losses delayed the hotel's opening by approximately 144 days. (*Id.* ¶ 11.) Plaintiff filed a claim with Defendant for the water damage, covered claim expenses, and Delay in Opening losses. (*Id.* ¶ 9.) In November 2023, Defendant denied the claim for Delay in Opening losses, stating that Defendant's expert determined the Water Events did not delay the hotel's opening. (*Id.* ¶ 12.) However, Defendant did pay for the repair damage caused by the Water Events. (*Id.* ¶ 9.)

B. Insurance Policy

Under Plaintiff's insurance policy with Defendant, (Dkt. 15-2 (Declaration of Mont Williamson) ¶ 4), Plaintiff requests that the court order the following items be submitted to Appraisal: (1) disputed repair costs amount, (2) number of days opening was delayed by the Water Events, and (3) the claims expenses amount. (Mot. at 9.) The court has excerpted relevant portions of the insurance policy below.

The Appraisal Provision states:

> If the NAMED INSURED and the Company fail to agree on the amount of the LOSS, each, upon written demand of either the NAMED INSURED or the Company made within sixty (60) days after receipt of proof of LOSS by the Company, shall select a competent and disinterested appraiser. The appraisers shall then select a competent and disinterested umpire. If they should fail for fifteen (15) days to agree upon such umpire, then upon the request of the NAMED INSURED or the Company, such umpire shall be selected by a judge of a court of record in the jurisdiction in which such appraisal is pending. Then, at a reasonable time and place, the appraisers shall appraise the LOSS based on the Valuation conditions within the Policy. If the appraisers agree, their written agreement shall determine the amount of LOSS and shall

> be paid by the Company within thirty (30) days thereafter. If the appraisers fail to agree, they shall submit their differences to the umpire. The umpire shall then submit a written award resolving such differences. Such award shall determine the amount of the LOSS and shall be paid by the Company within thirty (30) days thereafter.

(Dkt. 15-3 at 28 ("Appraisal Provision").)

The Insuring Agreement states:

> [T]he Company will pay the actual Loss of RENTAL INCOME, Loss of BUSINESS INCOME and/or SOFT COSTS/ADDITIONAL EXPENSES sustained during the PERIOD OF INDEMNITY as a result of a DELAY in completion of the INSURED PROJECT described on the Policy Declarations, or as amended by Endorsement, when such DELAY is caused by an OCCURRENCE or series of OCCURRENCE(S), resulting in physical LOSS to insured property by an insured peril.
> . . .
> The Company shall not be liable for any increase in DELAY caused by or resulting from:
> . . .
> Any deviation from the original SCHEDULED DATE OF COMPLETION or revisions thereto, and which is independent of an insured LOSS which gives rise to a DELAY, whether occurring prior to or after an OCCURRENCE.

(*Id.* at 40-41 ("Delay in Opening Endorsement").)

The Claim Preparation Expenses Provision states:

> The Company will pay reasonable expenses incurred by the NAMED INSURED for preparing and certifying details of a claim resulting from

> a direct physical LOSS which would be payable under this Policy, provided that the total amount of the direct physical LOSS exceeds the applicable Deductible.

(*Id.* at 16.)

II. Legal Standard

Under the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq*. (the "FAA"), "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. "The basic role for courts under the FAA is to determine '(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.'" *Kilgore v. KeyBank Nat'l Ass'n*, 718 F.3d 1052, 1058 (9th Cir. 2013) (en banc) (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). "If the court answers both questions in the affirmative, it must 'enforce the arbitration agreement in accordance with its terms.'" *Johnson v. Walmart Inc.*, 57 F.4th 677, 680-81 (9th Cir. 2023) (quoting *Revitch v. DIRECTV, LLC*, 977 F.3d 713, 716 (9th Cir. 2020)); *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (stating the FAA "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed").

"Under Ninth Circuit precedent, whether an appraisal constitutes arbitration for purposes of the FAA is a question of state law." *Fed. Ins. Co. v. Anderson*, 2019 WL 8128570, at *3 (N.D. Cal. Sept. 27, 2019) (citing *Portland Gen. Elec. Co. v. U.S. Bank Tr. Nat. Ass'n*, 218 F.3d 1085, 1086 (9th Cir. 2000)). The parties do not dispute that California law is applicable here. (Mot. at 11; Opp. at 9; Reply at 3.) "Federal courts within the Ninth Circuit have held that agreements to conduct 'appraisals' in California insurance contracts are agreements to arbitrate that can be enforced under the Federal Arbitration Act." *Viani v. Nationwide Mut. Ins. Co.*, 2024 WL 1049955, at *2 (E.D. Cal. Feb. 5, 2024) (collecting cases); *see, e.g.*, *Guarachi v. Aspen Specialty Ins. Co.*, 2021 WL 6427658, at *2 (C.D. Cal. July 16, 2021) ("[F]or purposes

of motions to compel arbitration under the FAA or CAA, appraisal provisions are a form of arbitration in California."). Accordingly, the court concludes the Appraisal Provision is a proper subject of the Motion. *See Viani*, 2024 WL 1049955, at *2.

III. Discussion

Plaintiff moves to compel appraisal and to stay the case, arguing that the disputes regarding repair costs, delay in opening calculations, and claim expenses are subject to the Appraisal Provision. (Mot. at 11-13.) Plaintiff argues that the Water Events delayed the hotel construction project from September 11, 2025, to February 22, 2022, and therefore the Delay in Opening Endorsement covers the delay. (*Id.* at 4-8.)

Defendant responds that the Water Events did not delay the hotel's opening, but rather obtaining the temporary certificate of occupancy (TCO) caused the delay. (Opp. at 5.) Defendant further responds that Plaintiff could not timely obtain the TCO, which is necessary to open the hotel, because of other contract work. (*Id.*) In support, Defendant states it retained J.S. Held LLC ("Held") to investigate the delay in opening the hotel, and Held concluded that "the achievement of the project TCO was driven by the completion of storm water systems, smoke control systems, and the installation of doors, along with other incomplete contract work, and not the May 29, 2021 and July 6, 2021 losses." (*Id.* at 7-8; Dkt 18-3 at 5.) Held further concluded that "[e]ven if alternative methods of completion were available for these items, there still was additional work that would have caused the project to finish past the claimed TCO date of September 11, 2021 that was not related to the loss." (Opp. at 8; Dkt. 18-3 at 5.)

The court finds the Appraisal Provision compels appraisal of claims concerning repair costs, delay in opening *losses*, and claim expenses. Although the parties dispute whether the Delay in Opening Endorsement covers the Water Events, the coverage dispute does not bar appraisal. *See Viani*, 2024 WL 1049955, at *2 ("First, as other federal district courts have persuasively reasoned in similar cases, coverage disputes are no bar to an appraisal when a party seeks that appraisal under the Federal Arbitration Act."). The court recognizes the "appraisal process is limited in scope" to "the amount of damage resulting to various items submitted for their consideration," and cannot "resolve questions of coverage and interpret provisions of the policy." *Anderson*, 2019 WL 8128570, at *5 (quoting *Lee v. Cal. Capital Ins.*

Co., 237 Cal. App. 4th 1154, 1166 (2015)). However, "[t]he disputed items must be submitted to an appraiser for valuation under the terms of the parties' agreement, and coverage can be litigated afterwards if necessary." *Viani*, 2024 WL 1049955, at *2 (citation modified). Consequently, the court need not reach coverage issues at this stage of the proceedings, and the court finds the disputes concerning repair costs, delay in opening losses, and claim expenses are subject to appraisal of their value. *See id.* ("Disputes about estimates, costs of repair, and whether further payment is required, like the disputes in this case, are proper subjects of an appraisal." (citation modified)); *see also Pollock v. Fed. Ins. Co.*, 2022 WL 2756669, at *12 (N.D. Cal. July 14, 2022) ("Where, as here, the dispute is factual rather than legal and simply involves whether a loss is covered, an appraisal panel may assign a value to items as to which coverage is disputed with the disclaimer that the award does not establish coverage or the insurer's liability to pay." (citation modified)). Because the court finds the Appraisal Provision compels appraisal, the court further finds that a stay is appropriate here. *See Viani*, 2024 WL 1049955, at *3 (staying case until appraisal is completed because "a stay will avoid confusion and needlessly concurrent or duplicative litigation about Viani's claims and their value"); *see also Anderson*, 2019 WL 8128570, at *6 (staying case where court concluded that plaintiff raised issues that are referrable to appraisal under FAA); *Guarachi*, 2021 WL 6427658, at *6 ("Because the Court concludes the issues raised are referable to appraisal, the Court will stay these proceedings pending appraisal."). Accordingly, the court **GRANTS** the Motion.

The court is not persuaded that Defendant is entitled to discovery before the appraisal process begins. As Defendant admits, appraisal is an "informal" proceeding that does not involve depositions, interrogatories, and the like unless mutually agreed upon by the parties. (Opp. at 13-14 (citing *Kirkwood v. California State Auto. Assn. Inter-Ins. Bureau*, 193 Cal. App. 4th 49, 58 (2011)).) Defendant relies on *Lee v. Cal. Capital Ins. Co.* where a California Court of Appeal continued a petition to compel an insurance appraisal to allow defendant to re-inspect the property and respond to the claim presented. *Lee*, 237 Cal. App. 4th at 1161. However, the California Court of Appeal did not establish a right to discovery prior to appraisal and Defendant cites no authority demonstrating such a right. *See generally id.*; (*see generally* Opp.)

IV. Disposition

For the reasons stated above, the Motion is **GRANTED.** The court **STAYS** this case pending completion of the appraisal proceedings. The court **ORDERS** the parties to file a joint status report regarding the arbitration proceedings every **90 days,** with the first status report due on **January 4, 2026**; and to file a joint status report within **5 days** of the completion of appraisal proceedings. **Failure to timely file any status report may result in dismissal for lack of prosecution and/or failure to comply with a court order.** *See* Fed. R. Civ. P. 41(b); *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006) ("Rule 41(b) permits dismissal for failure of the plaintiff to prosecute or to comply with any order of court."); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991) (courts may "act sua sponte to dismiss a suit for failure to prosecute") (citation modified); *Link v. Wabash R.R.*, 370 U.S. 626, 629 (1962) ("The authority of a federal trial court to dismiss a plaintiff's action with prejudice because of [their] failure to prosecute cannot seriously be doubted."); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) ("[C]ourts may dismiss under Rule 41(b) sua sponte, at least under certain circumstances."); *Pagtalunan v. Galaza*, 291 F.3d 639, 640-43 (9th Cir. 2002) (affirming *sua sponte* dismissal with prejudice "for failure to prosecute and for failure to comply with a court order"); *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986) (stating that "[d]istrict courts have inherent power to control their dockets" and "[i]n the exercise of that power they may impose sanctions including, where appropriate, default or dismissal").