The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

BRYAN CORY and SHANLYNN CORY,

Plaintiffs,

vs.

USAA GENERAL INDEMNITY COMPANY,

Defendant.
_____/

Case No. 3:25−cv−05452-KKE

PLAINTIFFS' MOTION TO COMPEL APPRAISAL

NOTE ON MOTION CALENDAR: July 9, 2025 (21 Days)

Plaintiffs Bryan Cory and Shanlynn Cory (the Corys"), by and through the undersigned counsel, move for the entry of an order compelling USAA General Indemnity Company ("USAA") to undergo the appraisal process stated in the insurance policy, as follows:

INTRODUCTION

This Court should grant the Corys' motion to compel appraisal, as the appraisal process is a binding term under the Policy. To support the motion, the Corys submit herewith the following contemporaneously-filed evidence for the Court's consideration, which is referenced throughout the incorporated memorandum:

- Declaration of Charles P. Pearson, dated June 18, 2025.
- Exhibit A – A copy of the supplemental claim and corresponding Xactimate estimate, dated January 2, 2025.
- Exhibit B – Correspondence from USAA to the Corys dated January 21, 2025.
- Exhibit C – Correspondence from the Corys' counsel to USAA dated February 6, 2025.
- Exhibit D – Correspondence from USAA to the Corys dated February 28, 2025.

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FACTUAL BACKGROUND

1. This lawsuit pertains to a property insurance claim submitted by the Corys, insured homeowners, to USAA, a property insurance corporation. The parties dispute the amount of loss of the insurance claim. *See generally Plaintiffs' Complaint* (Dkt. # 1-3).

2. The loss to the insured property occurred on August 11, 2023, and the Corys promptly submitted an insurance claim. *Plaintiffs' Complaint*, ¶s 7–9 (Dkt. # 1-3).

3. On September 14, 2023, USAA opened coverage for the claim the claim. *Plaintiffs' Complaint*, ¶ 10 (Dkt. # 1-3).

4. Upon knowledge and belief, USAA has paid $182,554.21 under Coverage A, $39,788.29 under Coverage C, and $97,336.38 under Coverage D. *Pearson Decl.* ¶ 3. USAA has not provided corresponding estimates to explain these payments. *Pearson Decl.* ¶ 3.

5. Although the Corys notified USAA that the estimated cost of repairing the damaged property was likely insufficient, USAA refused further investigation. *Plaintiffs' Complaint*, ¶ 10 (Dkt. # 1-3). As such, the Corys performed additional investigations at their own expense, including hiring a loss consultant to estimate for amount of the loss—totaling $787,446.09 (Coverage A – $529,850.81; Coverage C – $126,138.65; Coverage D – $131,456.63). *Plaintiffs' Complaint*, ¶ 11 (Dkt. # 1-3); *Pearson Decl.* ¶ 4.

6. On January 2, 2025, the Corys submitted a supplemental claim seeking $787,446.09, corroborated by an Xactimate estimate—notifying USAA that there was a dispute as to the amount of the loss. *Plaintiffs' Complaint*, ¶ 11 (Dkt. # 1-3); *Pearson Decl.* ¶ 4, Ex. A.

7. On January 21, 2025, USAA did not address the amount-of-loss dispute, but rather confirmed their prior claim determination. *Pearson Decl.* ¶ 5, Ex. B.

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8. The underlying insurance policy contract, issued by USAA to the Corys, a true and accurate copy of which is attached hereto as Exhibit A, contains a dispute-resolution provision called *Appraisal*, which states in part:

> 6. 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 competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of records in the state where the "residence premises" is located. The appraisers will separately set the amount of the loss. If the appraisers submit a written port of an agreement to is, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.
>
> Each party will:
>
> a. Pay its own appraiser; and
>
> b. Bear the other expenses of the appraisal and umpire equally.
>
> Any fees for expert witnesses or attorneys will be paid by the party who hires them. Neither the umpire nor the appraisers will have a financial interest that is conditioned on the outcome of the specific matter for which they are called to serve.
>
> This is not a provision providing for or requiring arbitration. The appraisers and umpire are only authorized to determine the "actual cash value", "replacement cost value", or cost to repair the property that is the subject of the claim. They are not authorized to determine coverage, exclusions, conditions, forfeiture provisions, conditions precedent, or any other contractual issues that may

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> exist between you and us. The appraisal award cannot be used by either you or us in any proceeding concerning coverage, exclusions, forfeiture provisions, conditions precedent, or other contractual issues. However, once contractual liability is admitted or determined, the appraisal award is binding upon you and us. This appraisal process and authority granted to the appraisers and the umpire can only be expanded or modified by written mutual consent signed by you and us.

See Plaintiffs' Complaint, ¶ 5, Ex. A (Dkt. # 1-3).

10. Wishing to utilize the policy's appraisal process to resolve the parties' dispute as to the amount of loss, the Corys invoked appraisal under the policy and Washington law on February 6, 2025. *Plaintiffs' Complaint*, ¶ 12 (Dkt. # 1-3); *Pearson Decl.* ¶ 6, Ex. C.

11. On February 28, 2024, USAA refused to participate in appraisal—providing no rationale apart from stating "USAA is not in agreement that the appraisal demand is warranted." *Plaintiffs' Complaint*, ¶ 12 (Dkt. # 1-3); *Pearson Decl.* ¶ 7, Ex. D.

12. Appraisal having been refused, the Corys filed this lawsuit in Washington State Court prior to the suit limitations provision in the policy, alleging breach of contract; bad faith conduct; violations of the Insurance Fair Conduct Act; and violations of the Consumer Protection Act. *See generally Plaintiffs' Complaint* (Dkt. #1-3).

13. USAA removed the lawsuit to United States District Court for the Western District of Washington. *See Defendant's Notice of Removal* (Dkt. #4).

LAW AND ARGUMENT

This Court should grant the Corys's motion to compel appraisal and stay litigation because the policy's terms require appraisal upon invocation by either party.

The terms of the insurance policy provide for mandatory appraisal upon the invocation of the the Corys or USAA: "If you and we fail to agree on the amount of loss, either may demand an

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appraisal of the loss." Mandatory appraisal provisions are enforceable under Washington Law. *Bennett v. Homesite Ins. Co*., C21-1422 MJP, at *5 (W.D. Wash. Sep. 20, 2022) (citing *Keesling v. W. Fire Ins. Co. of Fort Scott, Kansas*, 10 Wn.App. 841, 846-47 (1974)). Here, the parties dispute the amount of the loss. As such, enforcing the appraisal process under the terms of the insurance policy and Washington law is proper.

Moreover, appraisal is a preferable method for determining the amount of the loss. As described in the policy's appraisal provision, the two parties select experts to serve as their appraisers, who collaborate to determine the correct amount of loss. If they are unable to come to an agreement, a third expert, known as an umpire, renders the final determination setting the amount of the loss. The appraisal process in insurance policies "provide[s] a plain, inexpensive and speedy determination of the extent of the loss." *Keesling*, 10 Wn. App. 841 at 845 (internal citations omitted). *See also Bradley v. Safeco Ins. Co. of Am.*, 3:23-cv-5458-RSL (W.D. Wash. Mar. 13, 2024) (in ordering a stay of litigation, the court noted past holdings recognizing that "[a]ppraisal provides a sensible and efficient method for resolving valuation disputes"); *Bennett*, C21-1422 MJP, at *5 (quoting *Keesling*, 10 Wn.App. 841 at 846-47) ("Under Washington law, appraisal provisions are … intended to provide an efficient means of resolving valuation disputes.").

It is important to note that insurance policies' appraisal provisions are not self-executing and the appraisal must be confirmed by the court and judgment entered for the insured; indeed, the "authority and control over the ultimate disposition of the subject matter remain with the courts." *Keesling*, 10 Wn. App. 841 at 845. Recognizing that juries may not be best equipped to digest intricacies of construction expertise, appraisal is a tool designed to accurately determine the amount of loss—but is restrained to that limited purpose. Appraisal cannot resolve questions of

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coverage or extra-contractual claims. Indeed, insurers are able to deny coverage for items that have been appraised, allowing litigation to proceed purely on the narrow issue of coverage. These distinctions are important because appraisal is not an alternative to litigation, nor does appraisal preclude litigation. Rather, litigation and appraisal can and should be used in tandem. *See Bradley*, 3:23-cv-5458-RSL at *3 (concluding staying litigation to allow the appraisal process to conclude was practical, as appraisal would solve the contractual claims and streamline the parties' discovery efforts related to extracontractual claims); *Bennett,* C21-1422 MJP, at *5 (noting that, in compelling appraisal and staying litigation, the appraisal outcome is relevant to the insured's extra-contractual claims).

Here, the Corys have four pending claims: breach of contract; bad faith conduct; violations of the Insurance Fair Conduct Act; and violations of the Consumer Protection Act. Allowing the appraisal process to determine the amount of loss would resolve a principal factual issue in the above four causes of action, which would drastically reduce the time and resources necessary to resolve this lawsuit. The scope of discovery would be significantly narrowed if the amount of loss were determined by appraisal. As discovery has not yet been conducted, submitting this determination to the appraisal process will not result in duplicative discovery costs. Moreover, if trial proceeds, the parties would no longer have to introduce expert testimony to argue over the dollars and cents of the minutiae of remediation processes, contents valuation, and structural repairs. By determining the amount of the loss through appraisal, such extensive and technical evidence proffer would be avoided.

Accordingly, the Corys requests the entry of an order compelling appraisal and such other relief this Court deems just and proper.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7(e)

I certify that the foregoing memorandum contains less than 4,200 words in compliance with Local Rule 7.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on the Defendant by the Court's electronic filing system and by emailing to the foregoing document a copy thereof to the following email addresses:

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Respectfully submitted on June 18, 2025.

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