

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.

No. 3:25-cv-05452-KKE

**DEFENDANT’S RESPONSE TO  
PLAINTIFFS’ MOTION TO COMPEL  
APPRAISAL**

**NOTED ON MOTION CALENDAR:  
JULY 9, 2025**

**I. INTRODUCTION**

Defendant USAA General Indemnity Company (“USAA GIC”) respectfully requests that the Court deny plaintiff’s motion. While appraisal can be a useful tool for resolving what are primarily valuation disputes, the results it produces may not be useful when valuation issues are mixed with considerations that require application of policy provision or when there is no clear dispute between the parties with respect to all of the coverages for which appraisal is demanded.

**II. STATEMENT OF FACTS**

This lawsuit arises from a partial fire loss occurring at plaintiff’s home on August 11, 2023. To date, USAA has estimated a replacement cost value of the dwelling repairs of \$176,702.84 of which had paid the actual cash value of \$145,114.17 as of April 24, 2024 and also estimated ordinance and law expenses of \$19,24.47 relating to the likely need to replace the electrical system

1 in the home. Dkt. 13-2 at 2. USAA also paid for the insured's incurred and reported living  
 2 expenses. Plaintiff claims that there is a dispute about the amount of living expenses but the  
 3 dispute is not defined. The living expense / Loss of Use (Coverage D) discrepancy appears to  
 4 simply be an unexplained discrepancy between the plaintiff's demand and the supporting  
 5 documents. Plaintiff's demand was for \$131,456.63. (Dkt. 13-1 at p.2, 5) The demand is allegedly  
 6 supported by "receipt corroborating the contents valuation and the additional living expenses." *Id.*  
 7 at 2. The only support provided for additional living expenses was the cost of renting two hotel  
 8 rooms for 161 nights for a total of \$60,403.98. *Id.* at 196-97. As USAA GIC explained in its  
 9 response to the appraisal request, these hotel expenses were already included in the \$97,336.38  
 10 USAA GIC already paid under Coverage D and the demand presented no new information to  
 11 consider. Dkt. 13-2 at 3.

12 The dispute with respect to the personal property claim is over plaintiff's contentions on  
 13 whether and why they claim certain personal property is not salvageable. As USAA GIC explained  
 14 to plaintiff, it had paid for some of the items on plaintiff's inventory as non-salvageable but with  
 15 respect to the remainder, they should have been cleaned by the contractors the insured retained for  
 16 the purpose. USAA GIC explained that that would not be liable for workmanship issues with  
 17 respect to the cleaning contractors, CRDN and SERVPRO. Dkt. 13-2 at 3.

18 The Appraisal provision in the USAA GIC policy reads:

19 6. Appraisal. If you and we fail to agree on the amount of loss, either  
 20 may demand an appraisal of the loss. In this event, each party will  
 21 choose a competent and impartial appraiser within 20 days after  
 22 receiving a written request from the other. The two appraisers will  
 23 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 record 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 report of an agreement to us, 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”, 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 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.

Dkt. 3 at 49.

The final paragraph of the above sets forth the very narrow authority of the appraisers absent agreement of the parties to expand that authority. Specifically, the appraisers are authorized only to determine the value or cost to repair property that is the subject of the claim. Notably, the provision does not grant the appraisers authority to determine the amount of additional living expense coverage to which the insured is entitled. It also expressly disclaims the authority of the appraisers to apply exclusions or conditions. Thus, if there are significant issues with how exclusions or conditions apply to the loss, the two bottom line numbers “actual cash value” and

1 “replacement cost value” of the property may end up being useless.

2 Here, USAA GIC contends that much of what is now claimed is a result of failure to  
3 adequately protect covered property after the loss. The policy excludes such losses as follows:

4 LOSSES WE DO NOT COVER UNDER DWELLING  
5 PROTECTION AND PERSONAL PROPERTY PROTECTION:  
6 PROTECTION, OTHER STRUCTURES

7 \*..\*..\*

8 e. Neglect, by or failure of any “insured” to use all reasonable means  
9 to save and preserve property at and after the time of a loss or  
10 damage or the event resulting in loss or damage.

11 \*..\*..\*

12 c. Faulty, negligent, inadequate or defective:

13 \*..\*..\*

14 (2) Design, specifications, workmanship, repair,  
15 construction, renovation, remodeling, grading, compaction.

16 Dkt. 3 at 43-44.

17 Another key condition at issue is the ordinance and law coverage. The property has original  
18 wiring from the first half of the 20<sup>th</sup> century mixed with other types of wiring such that home’s  
19 electrical system is non-code compliant. A repair permit would likely be conditioned on the  
20 electrical being upgraded. Costs incurred for this reason are provide limited coverage and only if  
21 the insured actually incurs them:

22 14. Building Ordinance or Law. For loss caused by a loss under  
23 Section I – LOSSES WE COVER to buildings under Dwelling  
Protection and Other Structures Protection, we will pay the  
increased costs which are required and you actually incur to comply  
with any ordinance or law governing the rebuilding, repair or  
demolition of the damaged property.

The limit for this coverage will not be more than 5% of the Coverage A – Dwelling Protection amount of insurance.

This coverage is additional insurance and does not reduce the Dwelling Protection amount of insurance.

Dkt. 3 at 38.

### III. ARGUMENT AND AUTHORITY

Denying a motion to compel appraisal is appropriate where the appraisal would be useless. *Mercer Intern., Inc. v. U.S. Fidelity and Guar. Co.*, 938 F. Supp. 680, 683 (W.D. Wash. 1996); *Nat'l Fire Ins. Co. of Hartford v. Solomon*, 96 Wash. 2d 736, 771-72 (1982). Among other circumstances, an appraisal is useless where the controversy between insurer and insured is over contract terms and not the valuation amount. *Id.*; *Stanikzy v. Progressive Direct Ins. Co.*, 2020 U.S. Dist. LEXIS 94545, \*6 (W.D. Wash., 2020). Here, while USAA GIC may disagree with the quantitative aspects of plaintiff's demand, these disagreements are combined with concerns about application of policy terms and conditions.

#### A. Living Expenses are not Subject to Appraisal and there is no Actual Dispute about them.

As set forth above, there is no clear “dispute” over additional living expenses and even if there was a dispute, the appraisal provision does not grant the appraisers authority to determine living expenses. The appraisal provision limits the authority of the appraisers to determining the value of the property that is the subject of the claim. Additional living expense (Coverage D) does not compensate for the value of property but rather for increased expenses incurred while home is uninhabitable:

1. Additional Living Expense. If a loss covered under Section I - LOSSES WE COVER makes that part of the “residence premises” where you reside uninhabitable, we cover the reasonable and necessary increase in living expenses so that your household can

1 maintain its normal standard of living.

2 Payment will be for the shortest time required to repair or replace  
3 the damage or, if you permanently relocate, the shortest time  
4 required for your household to settle elsewhere.

5 Dkt. 3 at 70. Moreover, plaintiffs have not documented any living expenses that USAA GIC has  
6 not already paid.

7 **B. An Appraisal Would not Resolve the Personal Property Discrepancy**

8 The personal property coverage involves not simply the value of the claimed property but  
9 also a concern under the policy provisions as to whether USAA GIC should be liable for the cost  
10 of replacing salvageable property that has become unsalvageable from post-loss neglect or  
11 improper storage or cleaning. An appraisal would not resolve this issue because the appraisers are  
12 not authorized to do anything other than produce a value number for that property. An appraisal  
13 would be of limited use because the resulting number would not resolve the causation concerns  
14 regarding the neglect and workmanship exclusions with respect to a portion of the items.

15 **C. Appraisal of the Building Claim is Also Inappropriate at This Time**

16 While there is no doubt a large quantitative discrepancy on the building claim between  
17 USAA GIC's assessment of the cost of building repairs and the most recent assessment by  
18 plaintiff's consultant, the issues extend beyond valuation. As is the case with the personal  
19 property, it is not clear why plaintiff's consultant estimate is so high and if it takes into  
20 consideration ordinance and law or deterioration of the property since the date of loss due to  
21 neglect. An appraisal of overall value would be of little use because it would be difficult after the  
22 fact to apply the relevant conditions and limitations to coverage.

23 **IV. CONCLUSION**

Because appraisal is either inappropriate or premature as a means of resolving the disputes

1 giving rise to this litigation, USAA GIC respectfully requests that that Court deny plaintiff's  
2 motion.

3 Dated this 3<sup>rd</sup> day of July, 2025.

4 s/ Daniel L. Syhre

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