IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JONATHAN COUTTS and MELISSA COUTTS	:	Civil Action No. 2:24-cv-05770
vs.	:	
STATE FARM FIRE AND CASUALTY COMPANY	:	Jury Trial Demanded

REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT OF DEFENDANT, STATE FARM FIRE AND CASUALTY COMPANY

Defendant, State Farm Fire and Casualty Company ("Defendant State Farm"), respectfully files this Reply Brief in support of its Motion for Partial Summary Judgment.

In their Memorandum in Response to Defendant, State Farm Fire and Casualty Company's Motion for Partial Summary Judgment ("Plaintiffs' Response Brief"), Plaintiffs essentially oppose Defendant State Farm's Motion not because Defendant State Farm did not have a reasonable basis for its coverage decision, but because Defendant State Farm allegedly has not complied with the Policy's appraisal provision. Plaintiffs' arguments are misplaced.

Plaintiffs' Only Appraisal Demand was Premature

Prior to demanding appraisal under the terms and conditions of the Policy, Plaintiffs were required to submit "written, itemized documentation of a specific dispute as to the amount of the loss, identifying separately each item being disputed." See Policy (ECF No. 20-2) at p. 30 of 50.

Plaintiffs argue that Defendant State Farm received the required estimate from Paramount Home Solutions "as early as May 7, 2024" and cite as purported evidence of this fact the below claim file entry:

> I completed a review of the message sent from Chris Stokoe of Paramount Roofing to Agent staff person Jeanne dated Tuesday, May 7, 2024 11:45 AM along with his attachments . . .

See Plaintiffs' Response Brief (ECF No. 21) at pp. 13-14 of 153.

First, Plaintiffs neglected to include in Plaintiffs' Response Brief the entire sentence from the above claim file entry, which states:

> I completed a review of the message sent from Chris Stokoe of Paramount Roofing to Agent staff person Jeanne dated Tuesday, May 7, 2024 11:45 AM along with his attachments **and found nothing in these documents that supports we either missed or overlooked damage during either of inspections of the property that would warrant an additional inspection of the property or the need for us to change our coverage analysis**.

See Plaintiffs' Response Brief (ECF No. 21) at Exh. 2, p. 153 of 153 (emphasis added).

Second, the referenced email from Mr. Stokoe from May 7, 2024 merely attached **State Farm's** previous estimate, covering 11 damaged shingles. See May 7, 2024 email, attached as Exhibit "A". See also Defendant State Farm's Concise Statement of Facts in Support of Motion for Partial Summary Judgment ("Statement of Facts") (ECF No. 20) at ¶ 10. In fact, Paramount's estimate was not even complete and entered until May 22, 2024, so Plaintiffs' argument regarding the timing of Defendant State Farm's review of same is meritless. See Statement of Facts at Exh. G (ECF No. 20-7) at p. 2 of 16.

Indeed, in the first indication that Plaintiffs' estimate was received by Defendant State Farm, the claim file entry dated August 12, 2024 specifically notes that Plaintiffs' public adjuster called to discuss items submitted on August 9, 2024 (including the required estimate), and the public adjuster advised that previous emails probably were not accepted by Defendant State Farm because the roof report was over 25 MB. See claim file note dated August 12, 2024, attached as Exhibit "B" (a portion of which also was attached to Plaintiffs' Response Brief (ECF No. 21) at p. 151 of 153).

Plaintiffs again were advised of the necessity of submitting an itemized list of the specific dispute as to the amount of loss via email and letter dated August 8, 2024. See Statement of Facts (ECF No. 20) at ¶ 12 and Exh. F (ECF No. 20-6). This letter also reiterated the following:

> As a reminder, the appraisal provision in the policy is to resolve differences in the price of repairs which State Farm determined were covered and not meant to resolve disputes regarding coverage due to neither the appraisers nor umpire have no authority to decide questions of coverage under the policy.

See Statement of Facts at Exh. F (ECF No. 20-6), p. 5 of 6.

While no subsequent or reiterated appraisal demand was received by Plaintiffs after Defendant State Farm's August 8, 2024 appraisal denial letter (a demand which, under the terms and conditions of the Policy could not have been made until at least 10 days after Plaintiffs submitted their itemized estimate (see Policy (ECF No. 20-2) at p.21)), Defendant State Farm again advised Plaintiffs' public adjuster that the damage being claimed by Paramount above what already had been noted by Defendant State Farm was not covered by the Policy. See Statement of Facts (ECF No. 20) at ¶ 15. **The mootness of Plaintiffs' previous appraisal demand was specifically acknowledged by Plaintiffs' public adjuster** in his email dated August 30, 2024, in which he states as follows:

> ***Before proceeding with a formal request for appraisal in accordance with the policy contract***, I strongly urge you to arrange for a certified HAAG inspection of the roof in question.

See Statement of Facts at Exh. I (ECF No. 20-9) (emphasis added).

Thus, put simply, Plaintiffs' only appraisal demand prior to the commencement of this litigation on September 23, 2024 was premature, and no subsequent demand ever was made.

Plaintiffs' Attempts to Mandate Appraisal Should Be Disregarded, Especially When Evaluating their Bad Faith Claim.

In support of their efforts to argue that Defendant State Farm should have proceeded with appraisal, Plaintiffs rely heavily on Currie v. State Farm Fire and Cas. Co., No. 13-cv-06713, 2014 WL 4081051 (E.D. Pa. Aug. 19, 2014), a case which not only is not binding on this Court but is inapposite.

In Currie, this Court was tasked with interpreting an appraisal provision vastly different from the one at issue in this case. A true and correct copy of the certified policy at issue in Currie (ECF No. 11-7 in Case No. 13-cv-06713) is attached hereto as Exhibit "C". Specifically, the appraisal provision at issue in Currie under Homeowners Policy form FP-7955 provided, **in its entirety**, as follows:

> 4. **Appraisal**. If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal each shall select a competent disinterested appraiser. Each shall notify the other of the appraisers identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire If the two appraisers are unable to agree upon an umpire within 15 days you or we can ask a judge of a court of record in the State where the **residence premises** is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.

See Exh. C at p. 14.

The court in Currie specifically held that there were issues of material fact with respect to the issue of whether State Farm's refusal to go to appraisal constituted bad faith. However, that holding arose where, **under the terms of a different policy form**, State Farm allegedly avoided appraisal by characterizing a disagreement over the extent of damages from a storm and the scope of repairs needed to fix the roof as coverage issues. Currie, 2014 WL 4081051, at *5-*7.

In this case, the appraisal provision at issue (under State Farm Homeowners Policy form HW-2138) differs significantly from the one at issue in Currie. See Policy (ECF No. 20-2) at pp. 30-31 of 50. Importantly, the Policy provision at issue in this case, unlike the one in Currie, provides, in relevant part, as follows:

> **Appraisal.** If ***you*** and ***we*** fail to agree on the ***amount of loss***, either party can demand that the ***amount of loss*** be set by appraisal. . .
>
> ***
>
> h. Appraisal is only available to determine the ***amount of loss*** of each item in dispute. The appraisers and the umpire have no authority to decide:
>
> (1) ***any other questions of fact***;
>
> (2) ***questions of law***;
>
> (3) ***questions of coverage***;
>
> (4) other contractual issues; or
>
> (5) to conduct appraisal on a class-wide bases

See id. (bold, italicized underlining added)

When interpreting language of the Policy, the starting point is the express language of the Policy. Donegal Mut. Ins. Co. v. Long, 564 A.2d 937, 947 (Pa. Super. 1989). If the express language at issue is clear, courts are required to give effect to that language. Bateman v. Motorists Mut. Ins. Co., 590 A.2d 281, 283 (Pa. 1991); Standard Venetian Blind Co. v. Am. Empire Ins. Co., 469 A.2d 563, 567 (Pa. 1983). Clear terms in an insurance policy are to be given their "plain and ordinary meaning." Northbrook Ins. Co. v. Kuljian Corp., 690 F.2d 368, 372 (3d Cir. 1982). Moreover, otherwise clear language is not rendered unclear because it requires the insured to read through the policy carefully and thoroughly. Standard Venetian Blind, 469 A.2d at 567; see also, Viger v. Commercial Ins. Co. of Newark, N.J., 707 F.2d 769, 774 (3d Cir. 1983); W. World Ins. Co. v. Reliance Ins. Co., 892 F. Supp 659, 662 (M.D. Pa. 1995); Kline v. The Kemper Grp, 826 F. Supp. 123, 127 (M.D. Pa. 1993).

Thus, unlike the policy at issue in Currie, the Policy in this case specifically states that parties may not go to appraisal to determine, *inter alia*, questions of fact, questions of law, or questions of coverage, including, for example, whether or not certain areas of the dwelling were

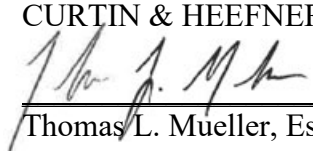
damaged as a result of the claimed weather event. Accordingly, because the determination of the scope of damage caused to a dwelling by the wind/hail storm necessarily entails questions of fact, law, and coverage, Defendant State Farm's interpretation of the Appraisal provision was correct.

In any event, absent a ruling from a Pennsylvania court or other authority indicating that Defendant State Farm's interpretation of the Appraisal provision from policy form HW-2138 in the context of Plaintiffs' claim was incorrect, Plaintiffs simply cannot argue that the interpretation was unreasonable, much less that Defendant State Farm knew it was unreasonable or recklessly disregarded the lack of reasonableness, either of which would be required to sustain a claim for Bad Faith against Defendant State Farm.

Accordingly, for the aforementioned reasons and those set forth in Defendant State Farm's Motion for Partial Summary Judgment (ECF No. 19) and related filings, Defendant State Farm respectfully requests that this Honorable Court grant its Motion for Partial Summary Judgment and enter an Order in the form previously submitted.

Respectfully submitted,

CURTIN & HEEFNER LLP

Date: September 16, 2025 By: 

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