IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JPP HOLDINGS LLC,

Plaintiff,

v.

No: 3:25-CV-272-TAV-DCP
JURY DEMANDED

STATE FARM FIRE AND CASUALTY COMPANY,

Defendant.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL APPRAISAL

COMES NOW the Plaintiff, JPP Holdings LLC ("JPP"), by and through counsel, and submits the following Memorandum in Support of its Motion to Compel Appraisal, respectfully stating as follows:

I. INTRODUCTION

With its Motion to Compel Appraisal, JPP simply seeks an Order instructing the parties to proceed with an appraisal of the amount of loss pursuant to the mandatory appraisal provision of the subject insurance policy. This is exactly the relief that has already been granted to policyholders across Tennessee by the Honorable Judges Breen, York, McDonough, Collier, Corker, Frensley, Campbell, and Trauger. (*See infra*, at Sections III.C and III.D., for further discussion). An appraisal of the subject loss may resolve this matter and eliminate a need for a trial entirely. At a minimum, an appraisal will significantly limit/streamline any subsequent trial in this case. In short, based on the facts of this case and the numerous Tennessee federal courts opinions compelling appraisal under like circumstances, the Court should compel an appraisal here.

In this first-party insurance action, State Farm Fire and Casualty Company ("State Farm") failed to fully pay its policyholder, JPP, all amounts owed as a result of a windstorm event(s) that occurred during the Policy period that damaged JPP's structures. The storm damage is covered under the policy, and State Farm has even acknowledged coverage for the storm damage. State Farm, however, has underestimated JPP's claim and refused to submit the claim to the mandatory appraisal process, resulting in the instant litigation.

Indeed, due to the dispute as to the amount of loss between JPP and State Farm, JPP invoked a provision in the insurance policy called "Appraisal." The appraisal process is an alternative dispute resolution protocol that mandates the appointment of a three-person appraisal panel (two "party appraisers" and a neutral "umpire") that is tasked with the responsibility of determining the amount of a loss. State Farm's insurance policy mandates that appraisal be conducted if two conditions are met: (1) there is a dispute concerning the amount of the loss; and (2) a written demand for appraisal is made. The appraisal process is specifically designed to resolve amount of loss disputes, just like this one, and to avoid the involvement of courts and litigation.

Because State Farm has already acknowledged coverage for at least a portion of the storm damage, Tennessee law demonstrates that an appraisal is mandatory under the terms of the Policy. For instance, in *Ingram v. State Farm Fire & Cas. Co.*, No. 1:21-cv-75, 2021 U.S. Dist. LEXIS 245457 (E.D. Tenn. Dec. 14, 2021), Judge Travis McDonough reasoned that when an insurer acknowledges *some* coverage for a loss, the dispute becomes an appraisable, amount of loss issue:

> [T]he parties do not dispute that [the insured's] damage is covered as a general matter—both parties conceded that the Policy covers some damage, and [the insurer] has made partial payments for the damage—but rather, the extent and the amount of the loss. … [The insured] contends that there is additional loss that is

> eligible for coverage, while [the insurer] contends that this is an issue if scope of coverage. However, **this dispute must necessarily be treated as one regarding the total amount of loss, rather than coverage, as [the insurer] has conceded that at least *some* storm damage is covered.**"

Ingram, 2021 U.S. Dist. LEXIS 245457, at *5-6 (italic emphasis in original | bold emphasis added). So, too, with State Farm here; even if it now contends that the Parties disagree only as to the scope of covered loss and not the amount of loss, appraisal is still mandated by the Policy because State Farm has conceded that at least *some* damages are covered.

This Motion only seeks enforcement of the mandatory appraisal provision within State Farm's Policy, requesting entry of an Order requiring the Parties to move forward with an appraisal of the Loss (defined below) and staying the case pending the appraisal's completion. Again, such a ruling would be consistent with the decisions of several Tennessee federal courts sitting in diversity jurisdiction and thus applying Tennessee substantive law. *See*, *e.g*., *Morrow v. State Farm Fire & Cas. Co.*, 592 F. Supp. 3d 672 (E.D. Tenn. 2022); *Khushi P'ship v. Berkshire Hathaway Homestate Ins. Co.*, No. 3:22-cv-00265, 2023 U.S. Dist. LEXIS 6602 (M.D. Tenn. Jan. 13, 2023); *State Farm Fire & Cas. Co. v. Harper*, No. 3:20-cv-00856, 2021 U.S. Dist. LEXIS 245383 (M.D. Tenn. Aug. 13, 2021) ("Memorandum and Order [Granting Motion to Compel Appraisal]"); *State Farm Fire & Cas. Co. v. Harper,* 596 F. Supp. 3d 1032 (M.D. Tenn. 2022) ("Memorandum and Order [Affirming Order of Magistrate Judge]"); *Smith v. State Farm Fire & Cas. Co.*, No. 1:21-cv-01076-JDB-jay, 2021 U.S. Dist. LEXIS 239469 (W.D. Tenn. Dec. 15, 2021) ("Order Overruling Objections of the Defendant and Affirming Order of Magistrate Judge"); *Smith v. State Farm Fire & Cas. Co.*, No. 1:21-cv-01076-JDB-jay, 2021 U.S. Dist. LEXIS 245386 (W.D. Tenn. Oct. 27, 2021) ("Order Granting Motion to Compel Appraisal"); *Ingram v. State Farm Fire & Cas. Co.*, No. 1:21-cv-75, 2021 U.S. Dist. LEXIS 245457 (E.D. Tenn. Dec. 14, 2021); *Kush*

Enters., LLC v. Mass. Bay Ins. Co., No. 3:18-CV-492, 2019 U.S. Dist. LEXIS 241191 (E.D. Tenn. Nov. 7, 2019).[1]

II. RELEVANT FACTUAL BACKGROUND

A. THE STATE FARM POLICY & APPRAISAL CONDITION.

JPP's property, located at and around 100 Teejay Dr., Oak Ridge, Tennessee (the "Insured Buildings"), was insured by State Farm against property damage, bearing Policy No. 92-NN-5926-5 (the "Policy"). (*See generally* Policy, attached as ***Exhibit 1***). The Policy provided insurance coverage for accidental direct physical loss to the Insured Buildings and such other insurance coverage, as specifically set forth in the Policy. With respect to Appraisal, the Policy provides:

b. Appraisal

> 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. Each party will notify the other of the selected appraiser's identity within 20 days after receipt of the written demand for an appraisal. The two appraisers will select an umpire. If the appraisers cannot agree upon an umpire within 15 days, 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:
>
> **(1)** Pay its chosen appraiser; and
>
> **(2)** 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.

[1] Even more, relying, in part, on this cited authority, Chancellor Patricia Head Moskal of the Chancery Court for Davidson County, Tennessee likewise compelled an appraisal in *Walton Bus. Park v. Zurich Am. Ins. Co.*, 2022 Tenn. Ch. LEXIS 2 (July 18, 2022). There, in compelling appraisal, the court reasoned that, "[t]he parties agreed to a mandatory appraisal process under the Policy, appraisal provisions are enforceable in Tennessee, the parties dispute the amount of the losses under the Policy, and Plaintiff made written demand to invoke the appraisal process." *Id.* at *7.

(*See* ***Exhibit 1***, Policy, at PDF p. 56).

B. THE LOSS, CLAIM INVESTIGATION, & APPRAISAL DEMAND.

On or about May 26, 2024, May 27, 2024, and/or on other dates within the Policy period, a severe windstorm event(s) struck the Insured Buildings, resulting in substantial accidental direct physical damage (the "Loss"). (*See* DE# 1, Compl. PageID# 3, at ¶ 13). The Loss consisted of damage to the roofs and interiors of the Insured Buildings. (*Id.*). JPP promptly reported the Loss to State Farm upon discovery of the damage. (*Id.*, PageID#3 at ¶ 16). State Farm then inspected the Insured Buildings and acknowledged coverage for the Loss. (*Id.*, PageID# 3-4, at ¶¶ 17, 18, 21).

Unfortunately, State Farm's estimate and payments concerning the Loss were markedly insufficient to indemnify JPP. (*Id.*, PageID# 4, at ¶ 22). For instance, State Farm issued an estimate in the amount of $11,866.59 (replacement cost value) for repairs to wind-damaged shingles, among other things, as a result of the Loss[2]. (*Id.*, PageID# 4, at ¶ 20). Accordingly, State Farm accepted JPP's claim as compensable and issued payment in the amount of $9,366.59 (replacement cost value less deductible). (*Id.*, PageID# 4, at ¶ 21).

On the other hand, JPP values the Loss significantly higher, and the Parties currently dispute the amount of the Loss for this claim. Given the Parties' dispute as to the amount of the Loss, JPP wrote to State Farm, through counsel, twice demanding appraisal. (*See* DE 1-1, Compl.,

[2] In State Farm's Answer, it contests, in part, that "[u]pon information and belief, the property was damaged prior to the commencement of the policy period and therefore no coverage exists for such damage." (*See* DE# 13, Answer, PageID# 36, at ¶ 13). Similarly, State Farm asserts that, "[i]t is admitted that the Defendant assigned a claim number, but did not accept this as a covered loss. Those allegations are denied." (*See* DE# 13, Answer, PageID# 36, at ¶ 17). To the contrary, by issuing an estimate and a partial payment, Defendant acknowledged that a covered event struck the Insured Buildings during the Policy's period. Defendant's attempt to manufacture a purported coverage issue, therefore, should be rejected.

PageID# 4, at ¶¶ 24, 28). State Farm, though, has declined to participate in an appraisal at this time, and this Motion follows. Accordingly, JPP respectfully asks the Court to compel State Farm to participate in an appraisal of the amount of loss and name its appraiser.

III. LAW AND ARGUMENT

In this case, the Policy **mandates** appraisal upon proper written demand, and "[t]he Court's analysis begins with the Policy's language." *Ingram*, 2021 U.S. Dist. LEXIS 245457, at *4. The only two prerequisites for invoking appraisal are: (1) a disagreement concerning the amount of loss; and (2) a written demand for appraisal. (*See* ***Exhibit 1***, at PDF p. 56). Here, both requirements have been satisfied. Upon satisfaction of these two prerequisites, each party "***will*** select a competent and impartial appraiser", and if the parties' appraisers cannot agree on an umpire, either party "may request that selection [of an umpire] be made by a judge of a court having jurisdiction." *Id.* (emphasis added). The appraisal clause then states that the "appraisers ***will*** state … [the] amount of loss," and if they "fail to agree, they ***will*** submit their differences to the umpire." *Id.* (emphasis added). Finally, a "decision agreed to by any two ***will be binding.***" *Id.* (emphasis added). The language in the Policy is not optional once appraisal is properly invoked, but rather, it is mandatory.

A. COURTS LOOK FAVORABLY UPON PROPERTY INSURANCE APPRAISAL CLAUSES.

As explained above, Tennessee federal courts, applying Tennessee law, have previously ruled on the issues in the present Motion. Because JPP made a written demand for appraisal concerning the dispute over the amount of loss, all requirements have been satisfied, and an Order compelling the Parties to move forward with an appraisal of the loss is appropriate. *See*, *e.g.*, *Morrow*, 592 F. Supp. 3d at 675 (compelling appraisal and stating that "the Policy explicitly provides for appraisal, and the provision is mandatory if invoked by one of the parties."); *Ingram*, 2021 U.S. Dist. LEXIS 245457, at *4 (same); *Smith*, 2021 U.S. Dist. LEXIS 245386, at *3-4 ("Order Granting Motion to Compel Appraisal") (compelling appraisal and stating that "[t]he policy mandates appraisal when: (1) there is a dispute regarding the amount of the loss and (2) a written demand for appraisal is made.").

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*, 2023 U.S. Dist. LEXIS 6602, at *7 (same).

B. THERE IS A DISPUTE AS TO THE AMOUNT OF LOSS, MAKING APPRAISAL APPROPRIATE HERE.

Tennessee courts have carved out the nuances of the appraisal process, which demonstrate that appraisal is appropriate to determine the amount of loss. Here, the Loss damaged the Insured Buildings, and the damage from the Loss is covered by the terms of the insurance policy; thus, there are no coverage or causation issues to be decided. Indeed, the only dispute here is about pricing and the means and methods of the necessary work to repair the damage, *i.e.*, the amount of the Loss.

In 2001, the Court of Appeals of Tennessee noted that the purpose of an appraisal is to value the amount of a property loss.[3] *See Merrimack Mut. Fire Ins. Co. v. Batts*, 59 S.W.3d 142,

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[3] District Judge Trauger explained why an appraisal may consider at least some element of causation, which does not preclude an appraisal of the amount of a loss:

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[.]"). In other words, those disputes are properly left to the courts. *Id.*; *see also Harowitz*, 168 S.W. at 165. Here, JPP seeks an appraisal as to the amount of loss—not coverage.

Twelve years later, in *Artist Bldg. Partners v. Auto-Owners Mut. Ins. Co.*, 435 S.W.3d 202 (Tenn. Ct. App. 2013), the Court of Appeals emphasized the importance of policy language that grants or limits the authority provided to the appraisal panel, and therefore, declined to overturn an appraisal award when the appraisal clause provided that a decision by the panel as to the amount of loss would be binding. *Id.* at 218 (reaffirming *Merrimack*'s holding that the appraisal panel's authority is "limited to the authority granted in the insurance policy or granted by some other express agreement of the parties").

In 2015, this Court was faced with the application of an appraisal clause in an insurance policy insuring an aircraft. *Glob. Aero., Inc. v. Phillips & Jordan, Inc.*, 2015 U.S. Dist. LEXIS 124911 (E.D. Tenn. Sept. 17, 2015). In that case, after a hard landing, an aircraft was damaged. *Id*. at *4. The insurer procured bids to repair the damage with used parts (approximately $1 million), and the insured obtained a quote to repair the damage with new parts (approximately $3.7

> [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).

million). *Id*. at *6. The insurer sought an Order from the court to compel the parties to participate in the appraisal process. In contrast, the insured argued that the issue of whether the policy allows new or used parts was a coverage question involving the interpretation of the phrase "materials and parts of like kind and quality." *Id*. at *6. Because "[t]here [was] no dispute that: (1) the parties have each selected a competent appraiser to evaluate the claimed loss and (2) the appraisers do not agree as to the cost to repair the physical damage to the Aircraft," the court ordered that the appraisal must proceed, with the umpire's decision to be litigated if necessary. *Id*. at *7.

Further, in *Pear Tree Properties, LLC v. Acuity*, 2017 U.S. Dist. LEXIS 137032 (M.D. Tenn. Aug. 25, 2017), an insured and insurer agreed to a limited appraisal during pending litigation. *Id*. at *3. After the appraisal award, the insurer contested coverage as to portions of the award, and the insured sought to enforce the appraisal award. *Id*. The court denied the insured's request to enforce the appraisal award, noting that, although the appraisal panel had properly determined the amount of loss on all disputed areas of liability, it was up to the factfinder, not the appraisal panel, to determine what portions of the appraisal award were covered by the insurance policy. *Id.* at *6. In so ruling, the court found important that the appraisal was "limited" by agreement of the parties, although the court did not describe the manner in which the appraisal was "limited." *Id*. at *6-7.

Finally, and recently, the *Smith*, *Ingram*, *Harper*, and *Morrow* courts all quoted portions of Judge Collier's reasoning in *Kush Enters., LLC v. Mass. Bay Ins. Co.*, 2019 U.S. Dist. LEXIS 241191 (E.D. Tenn. Nov. 7, 2019), with approval, where Judge Collier explained:

> [The insurer] contends the parties disagree only on the scope of covered loss, not the amount of loss. Specifically, [the insured] claims there is residual damage to the buildings that has not been covered and [the insurer] asserts there is no additional covered loss as there is no residual damage. *By contesting whether there is additional covered loss, however, [the insurer] necessarily disagrees with [the insured] that the total amount of loss [the insured] incurred includes any additional*

> *loss. The plain language of the provision allows either party to demand appraisal when there is a disagreement on the amount of loss. As a result, the court finds the provision is applicable and can be enforced by this Court.*

Kush, 2019 U.S. Dist. LEXIS 241191, at *4 (emphasis added); *see also Smith*, 2021 U.S. Dist. LEXIS 239469, at *5 ("Order Overruling Objections of the Defendant and Affirming Order of Magistrate Judge") (reiterating portions of same); *Smith*, 2021 U.S. Dist. LEXIS 245386, at *4 ("Order Granting Motion to Compel Appraisal") (same); *Morrow*, 592 F. Supp. 3d at 676 (same); *Ingram*, 2021 U.S. Dist. LEXIS 245457, at *6 (same); *Harper*, 2021 U.S. Dist. LEXIS 245383, at *8-9 (same). Simply, under Tennessee law, appraisal provisions in insurance policies are enforceable according to their terms and are for the purpose of determining an amount of loss, not coverage.

In this case, the Loss is a covered event, damage from the same is a covered cause of loss, and a dispute as to the amount of loss, including the means and methods of the repair work to be done, remains. In the end, because this dispute is about the amount of loss, appraisal is not only appropriate, but also mandatory pursuant to the Policy's language.

C. WINDSTORM CLAIMS, LIKE HERE, ARE PARTICULARLY APPROPRIATE FOR APPRAISAL.

Appraisal is particularly appropriate for windstorm claims, and even more so where there is agreement that at least "some" damages are covered. *See Ingram*, 2021 U.S. Dist. LEXIS 245457, at *6 ("[T]his dispute must necessarily be treated as one regarding the total amount of loss, rather than coverage, as [the insurer] has conceded that at least *some* storm damage is covered") (emphasis in original); *see also Khushi P'ship*, 2023 U.S. Dist. LEXIS 6602, at *12 (compelling appraisal, stating that although "the defendant raises myriad affirmative defenses, but it does not dispute that a covered event giving rise to covered losses occurred during the Policy coverage period …"); *Underwriters at Lloyd's of London v. Tarantino Properties., Inc.*, 2012 U.S.

Dist. LEXIS 124972, at *6-7 (W.D. Mo. Sept. 4, 2012) ("The Policy clearly provides coverage for wind and hail damage, and Plaintiff has admitted *some* damage to the Properties was caused by wind and/or hail. Accordingly, the Court finds no meaningful dispute over coverage.") (emphasis added).

Such is the case here—after all, State Farm has already acknowledged some covered damage with respect to the Loss. The only remaining, relevant dispute is the amount of that loss. When an insurer admits that there is a covered loss, the amount of which is disputed, the dispute becomes an appraisable "amount of loss" question for the appraisal panel. *See*, *e.g.*, *Smith*, 2021 U.S. Dist. LEXIS 239469 ("Order Overruling Objections of the Defendant and Affirming Order of Magistrate Judge"); *Smith*, 2021 U.S. Dist. LEXIS 245386 ("Order Granting Motion to Compel Appraisal"); *Morrow*, 592 F. Supp. 3d 672; *Ingram*, 2021 U.S. Dist. LEXIS 245457; *Kush,* 2019 U.S. Dist. LEXIS 241191; *Khushi P'ship*, 2023 U.S. Dist. LEXIS 6602. That is the case here, and appraisal is thus mandatory pursuant to the Policy.

D. ANY ALLEGED COVERAGE OR LIABILITY DEFENSES MAY STILL BE RESERVED FOR TRIAL.

To the extent State Farm alleges coverage, causation, or liability defenses in response to this Motion, Tennessee law dictates that any such defenses are not waived by appraisal. Any such defenses are, in fact, a red herring concerning appraisal; an appraisal would have no impact on them and ordering an appraisal would not preclude State Farm from later litigating those purported defenses. *See generally Kush*, 2019 U.S. Dist. LEXIS 241191, at *5. Even more, compelling appraisal gives all parties to the contract the benefit of their bargain.

For instance, the United States District Court for the Western District of Tennessee compelled an appraisal in *Smith v. State Farm Fire & Cas. Co.*, 2021 U.S. Dist. LEXIS 245386 (W.D. Tenn. Oct. 27, 2021). In compelling an appraisal in *Smith*, Magistrate Judge York correctly explained that "this decision does not expand the scope of the appraisal process set out under the policy." *Id.* at *5. Magistrate Judge York also properly addressed any such purported, later defenses, stating that any such disputes may still be raised by the insurer after the appraisal, reasoning that the "Defendant can still dispute those issues after the appraisal is complete. ***If the parties disagree on the issues after the appraisal process, the court will decide them.***" *Id.* (emphasis added) (quoting *Kush Enters., LLC v. Mass. Bay Ins. Co.*, 2019 U.S. Dist. LEXIS 241191, at *5 (E.D. Tenn. Nov. 7, 2019) (citing *Merrimack Mut. Fire Ins. Co.*, 59 S.W.3d at 153)); *see also State Farm Fire & Cas. Co. v. Harper*, 2021 U.S. Dist. LEXIS 245383, at *10 (M.D. Tenn. Aug. 13, 2021) (stating that an insurer "can still dispute those issues after the appraisal is complete …").

In affirming Magistrate Judge York's Order Granting Motion to Compel Appraisal, Judge J. Daniel Breen similarly reasoned as follows:

> [b]y contesting whether there is additional covered loss, … [d]efendant necessarily disagrees with [p]laintiff that the total amount of loss [p]laintiff incurred includes any additional loss. The plain language of the provision allows either party to demand appraisal when there is a disagreement on the amount of loss. As a result, the [c]ourt finds the provision is applicable and can be enforced by this [c]ourt.

Smith, 2021 U.S. Dist. LEXIS 239469, at *5 ("Order Overruling Objections of the Defendant and Affirming Order of Magistrate Judge") (quoting *Kush*, 2019 U.S. Dist. LEXIS 241191, at *4).

And as explained, *supra*, in *Ingram v. State Farm Fire & Cas. Co.*, 2021 U.S. Dist. LEXIS 245457 (E.D. Tenn. Dec. 14, 2021), Judge McDonough ruled that appraisal is proper even when the "[policyholder] contends that there is additional loss that is eligible for coverage, while [the insurer] contends that this is an issue of scope of coverage … this dispute must necessarily be treated as one regarding the total amount of loss, rather than coverage, as [the insurer] has already conceded that at least *some* storm damage is covered." *Id.* at *6 (emphasis in original). Notably, Judge McDonough also properly observed that, "[t]o decide otherwise in this instance would allow insurance agencies to avoid appraisals by claiming there is a coverage issue, even when the dispute concerns additional amounts of loss." *Id*.

Moreover, in *Morrow v. State Farm Fire & Cas. Co.*, 592 F. Supp. 3d 672 (E.D. Tenn. 2022), District Judge Corker compelled an appraisal and reiterated the principles above, opining that "[t]his dispute necessarily must be treated as one regarding the total amount of loss, rather than coverage, as [the insurer] has already conceded that at least some storm damage is covered." *Id.* at 676. Judge Corker reiterated Judge McDonough in *Ingram*, also stating that "[t]o decide otherwise in this instance would allow insurance agencies to avoid appraisal by claiming there is a coverage issue, even when the dispute concerns additional amounts of loss." *Id.*

District Judge Trauger also recently compelled an appraisal in *Khushi P'ship v. Berkshire Hathaway Homestate Ins. Co.*, No. 3:22-cv-00265, 2023 U.S. Dist. LEXIS 6602 (M.D. Tenn. Jan. 13, 2023). There, Judge Trauger opined that "even if the appraisal might turn out to involve, not only damage but liability issues as well, that factor alone would not dictate prohibiting the appraisal as an initial matter." *Id.* at *13 (citing *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 894-95 (Tex. 2009)). Judge Trauger reasoned that "the Policy in this case unambiguously provides that the defendant retains its right to deny a claim—that is, to dispute liability and coverage—even when an appraisal takes place." *Id.* at *14.

Other courts around the country have ruled similarly. *See*, *e.g.*, *Walnut Creek Townhome Ass'n v. Depositors Ins. Co.*, 913 N.W.2d 80, 94 (Iowa 2018) (reversing trial court's decision to reject appraisal award concerning amount of loss and ordering trial to proceed to adjudicate the coverage defenses); *Laredo Landing Owners Ass'n v. Sequoia Ins. Co.*, 2015 U.S. Dist. LEXIS 75104, at *6 (D. Colo. June 10, 2015) (ordering appraisal and stating "while the appraisal process will likely result in a binding determination as to the amount of loss … the court acknowledges that the parties may need to resume this action to resolve issues outside the scope of the appraisal."); *Sunshine State Ins. Co. v. Rawlins*, 34 So. 3d 753, 755 (Fla. Dist. Ct. App. 2010) (holding that trial court may allow appraisal to go forward on "dual track" basis while preserving insurer's right to contest coverage).

E. AN APPRAISAL HAS NUMEROUS BENEFITS AND SHOULD BE COMPELLED IN THIS CASE.

The reasons for compelling appraisal are self-evident and numerous. First, compelling performance is consistent with the plain language of the appraisal clause, which mandates submission to appraisal when demanded by either the insured or the insurer. Second, it is consistent with the principle that an insured is entitled to receive the benefit of the bargain for which it paid premiums, including the ability to resolve a disagreement without the expense and delay of litigation. Third, the right to obtain performance of an appraisal provision is consistent with the judicial economy that results from avoiding the needless and wasteful litigation of the issues of loss and value. (*See* Wilkofsky, *The Law and Procedure of Insurance Appraisal*, p. 345 (PDF p. 3) (3d ed. 2016), quoted portions attached as ***Exhibit 2***).

This Court has similarly explained the benefits of an appraisal. *See Glob. Aero., Inc*, 2015 U.S. Dist. Lexis 124911, at *7-9. Indeed, it has explained why appraisal is a valuable alternative dispute resolution process:

> The Court finds that ***proceeding with the appraisal process is not only consistent with the terms of the Policy, but it will potentially save both party resources and judicial resources***. When the appraisal process is completed, the likelihood of the parties reaching a settlement will increase, because each party will know where it stands upon a return to litigation. Moreover, the final written decision will give both of the parties a target at which to direct their arguments either in support or opposition. Depending on the umpire's determination, the written decision could potentially eliminate the need for future litigation in this Court, and at a minimum, ***it will streamline any future litigation***.

Id., at *7-8 (emphasis added); *see also Khushi P'ship*, 2023 U.S. Dist. LEXIS 6602, at *14 ("It seems clear that proceeding with an appraisal will expedite resolution of this case, economize party and judicial resources, and increase the likelihood of settlement.").

In the end, the Policy constitutes the Parties' contract, to which both Parties have agreed. And the Policy's appraisal clause states that a party may invoke appraisal when there is a disagreement concerning the amount of the loss and a party makes a written demand for appraisal. (*See* ***Exhibit 1***, at PDF p. 56). Once those prerequisites are satisfied, the appraisal process becomes ***mandatory*** pursuant to the Policy. (*Id.*). Appraisal simplifies and streamlines issues for trial, and this Court should order the mandatory—and agreed-to—appraisal process to proceed. To hold otherwise runs contrary to the purpose and intent of contract law itself.

IV. CONCLUSION

Ultimately, and in the final analysis, the Court should not lose sight of the primary purpose of the appraisal clause. Appraisal expedites the ultimate resolution. *Masonic Temple Ass'n of Grand Rapids v. Michigan Fire & Marine Ins. Co*., 36 N.W.2d 317 (Mich. 1949) ("[I]f there was an appraisal the parties might adjust their differences and end the litigation."). JPP's Motion to Compel Appraisal seeks only enforcement of the Policy's mandatory appraisal condition. JPP respectfully requests that the Court order the appraisal process to proceed, as required pursuant to the terms of the Policy, and staying this action pending the appraisal's completion.

Accordingly, and for all the reasons stated herein, JPP prays that the Court enter an Order compelling the Parties to proceed with an appraisal of the Loss and staying the action pending the outcome of the appraisal process.

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 TO COMPEL APPRAISAL** has been mailed electronically via the Court's electronic filing system, to all counsel of record this 18th day of September 2025.

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