

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANACHRISTOPHER LAYFIELD and
MARY LAYFIELD

CIVIL ACTION

VERSUS

NO: 12-1590

OCCIDENTAL FIRE & CASUALTY
INSURANCE COMPANY OF NORTH
CAROLINA

SECTION: J

ORDER AND REASONS

Before the Court is Defendant's *Motion for Summary Judgment (Rec. Doc. 40)*, set for hearing on Wednesday, January 15, 2014, as well as Plaintiffs' *Opposition (Rec. Doc. 45)*. For the reasons expressed below, the motion is **DENIED**.

Defendant argues that Plaintiffs' invocation of the appraisal clause in the insurance policy is untimely and unreasonable. This Court is instructed by *Newman v. Lexington Ins. Co.*, which makes it clear that courts have wide discretion to determine whether to stay proceedings pending an appraisal.¹ In *Newman*, the court found that "[t]he timeliness of a demand for an appraisal in each case depends upon the circumstances as they existed at the time the demand was made," and the court also took into account whether the party against whom the demand was made

¹ No. 06-4668, 2007 WL 1063578, at *4 (E.D. La. Apr. 4, 2007) (Africk, J.) (internal citations omitted).

would be prejudiced by the appraisal process.²

Here, the insurance policy contains no time limit within which a demand for an appraisal must be made, and the Court rejects Defendant's argument that Plaintiffs' demand is untimely. Additionally, Defendant has not alleged that the use of the appraisal process will prejudice it in any way.

Accordingly,

IT IS HEREBY ORDERED that Defendant's *Motion for Summary Judgment* (Rec. Doc. 40) is **DENIED**.

IT IS FURTHER ORDERED that these proceedings are **STAYED** pending appraisal.

IT IS FURTHER ORDERED that the pre-trial conference, currently set for January 30, 2014, and the jury trial, currently set for February 24, 2014, are **CANCELLED**.

IT IS FURTHER ORDERED that Defendant's pending *Motion in Limine to Strike Plaintiff's Experts* (Rec. Doc. 43) is **DENIED, WITHOUT PREJUDICE** to Defendant's right to re-urge the motion at a later date.

New Orleans, Louisiana, this 13th day of January, 2014.


CARL J. BARBIER
UNITED STATES DISTRICT JUDGE

² Id. (internal citations omitted).