

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

AMERICAS INSURANCE COMPANY

CIVIL ACTION

VERSUS

NO: 18-5055

BRIAN JARREAU and
MAGDALENA BUDZIAKOWSKA

SECTION: "A" (3)

ORDER AND REASONS

The following motions are before the Court:

Motion to Dismiss Claim for Attorney's Fees (Rec. Doc. 7) filed by plaintiff, Americas Insurance Company. Defendants Brian Jarreau and Magdalena Budziakowska oppose this motion. This motion, noticed for submission on August 22, 2018, is before the Court on the briefs without oral argument.¹

Motion to Compel Appraisal and Disqualify Appraiser (Rec. Doc. 8) filed by plaintiff, Americas Insurance Company. Defendants Brian Jarreau and Magdalena Budziakowska oppose this motion. This motion, noticed for submission on August 22, 2018, is before the Court on the briefs without oral argument.

Motion for Summary Judgment and Motion to Compel Appraisal (Rec. Doc. 28) filed by defendants, Brian Jarreau and Magdalena Budziakowska. Plaintiff, Americas

¹ Request for Oral Argument was filed in conjunction with the Motion to Dismiss Claim for Attorney Fees (Rec. Doc. 7) and the Motion to Compel Appraisal and Disqualify Appraiser (Rec. Doc. 8). The Court does not deem oral argument necessary.

Insurance Company opposes this motion. This motion, noticed for submission on September 5, 2018, is before the Court on the briefs without oral argument.

Defendants Brian Jarreau and Magdalena Budziakowska own immovable property in New Orleans, Louisiana allegedly damaged by a fire on or about January 5, 2018. (Rec. Doc. 1, Complaint ¶ 7). On January 5, 2018, Defendants submitted a claim for the damaged property to Plaintiff, Americas Insurance Company (Americas). (*Id.* ¶ 8). On March 19, 2018, Defendants submitted correspondence to Americas invoking the appraisal provision set forth in Americas' policy. (*Id.* ¶ 15). Defendants appointed Nader Anthony Odeh (Odeh) as their independent appraiser. (*Id.*). On April 3, 2018, Americas accepted Defendants' demand for appraisal pursuant to the Americas' policy, appointed Mitash Patel as Americas' appraiser, and objected to Odeh as Defendants' appraiser. (*Id.* ¶ 18). Americas seeks a declaratory judgment to declare Odeh ineligible to serve as Defendants' appraiser and to order Brian Jarreau and Magdalena Budziakowska to comply with the Americas' policy by participating in the appraisal by appointing a competent and impartial appraiser (*Id.* ¶ 33).

Defendants Brian Jarreau and Magdalena Budziakowska counterclaimed that Americas failed to appoint a competent and impartial appraiser pursuant to the Americas' policy. (Rec. Doc. 6 ¶ 14). In their counterclaim, Defendants requested an award for their costs and attorney's fees incurred. (*Id.* ¶ 26).

Americas now moves to dismiss Defendants' claim for attorney's fees, compel appraisal, and disqualify Defendants' appraiser, Odeh. Americas contends that Defendants fail to cite to any contractual or statutory basis for an award of attorney's

fees in connection with counter-claims for declaratory judgment. (Rec. Doc. 7).

Americas also contends that Odeh should be disqualified as Defendants' independent appraiser because he is not impartial and because Defendants retained Odeh as a public adjuster (Rec. Doc. 8). Americas asserts that if the Court deems Odeh a qualified independent appraiser, Americas will further challenge the appraisal award because Odeh's honesty and integrity are suspect. (*Id.*).

Defendants move for the Court to dismiss with prejudice Americas' Complaint of Declaratory Judgment, compel Americas to conduct the appraisal process on the terms of Americas' policy, and compel Americas to complete an appraisal with Odeh. (Rec. Doc. 28).

The Court, having reviewed the parties' submissions, rules as follows. The Motion to Dismiss Defendants' Claim for Attorney's Fees (Rec. Doc. 7) is GRANTED without prejudice subject to the Court's consideration in the event Defendants amend their pleading to allege bad faith.

The Motion to Compel Appraisal and Disqualify Appraiser (Rec. Doc. 8) is GRANTED IN PART AND DENIED IN PART. Americas cites the Americas' policy which includes an appraisal provision designed to address disputes over the amount of the loss. (*Id.*, Exhibit 1-A). Defendants do not oppose the enforcement of the policy and the appraisal process.

In the event of enforcement of the appraisal provision of the policy, each party must choose a "competent and impartial" appraiser. (Rec. Doc. 8, Exhibit 1-A).

Defendants state in their Answer to the Complaint (Rec. Doc. 6) and Americas asserts

now that Brian Jarreau contracted with Claims Consulting Contracting (CCC), Odeh's company, to pay an hourly rate up to a maximum of twelve percent of a payment tendered for claim recovery (Rec. Doc. 8, Exhibit "1-H"). The CCC contract provides that the twelve percent cap derives from the overall amount Defendants are permitted to collect from the appraisal process. (*Id.*)

Defendants argue that Odeh is subject to cross-examination and Americas must file a motion to vacate after the appraisal award is rendered. (Rec. Doc. 10). The Court agrees. Plaintiff will have the opportunity to cross-examine Odeh and this Court will be able to determine his competency and impartiality.

The Motion for Summary Judgment and Motion to Compel Appraisal is GRANTED in part and DENIED in part. The Motion to Compel Appraisal is granted as Defendants and Plaintiff agree that the appraisal process established by Americas' policy should be enforced. The Court in denying Americas' request for disqualification of Odeh, also denies Defendants' Motion for Summary Judgment in all other respects.

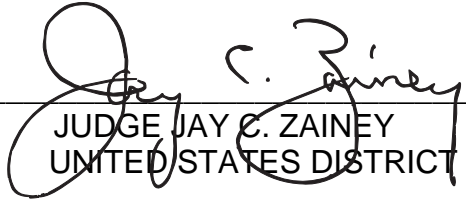
Accordingly, and for the foregoing reasons;

IT IS ORDERED that the **Motion to Dismiss Attorney's Fees (Rec. Doc. 7)** filed by Americas Insurance Company is **GRANTED** without prejudice;

IT IS FURTHER ORDERED that the **Motion to Compel Appraisal and Disqualify Appraiser (Rec. Doc. 8)** filed by Americas Insurance Company is **DENIED**;

IT IS FURTHER ORDERED that the **Motion for Summary Judgment and Motion to Compel Appraisal (Rec. Doc. 28)** is **GRANTED** in part to compel appraisal and otherwise **DENIED**.

September 13, 2018



Judge Jay C. Zainey
UNITED STATES DISTRICT JUDGE