

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MICHAEL D. LETOURNEAU, ET AL.

CIVIL ACTION

VERSUS

NO: 22-4686

QBE SPECIALTY INSURANCE CO.

SECTION: "A" (4)

ORDER AND REASONS

The following motions are before the Court: **Motion to Dismiss (Rec. Doc. 10)** and **Motion to Stay (Rec. Doc. 11)** filed by QBE Specialty Insurance Co. The plaintiffs, Michael D. Letourneau and Elizabeth W. Letourneau, oppose the motions. The motions, submitted for consideration on March 15, 2023, are before the Court on the briefs without oral argument (requested but not necessary).

Plaintiffs filed this action for damages sustained in Hurricane Ida against their property insurer, QBE Specialty Insurance Co. The policy contains an appraisal provision, which the plaintiffs invoked in November 2021 after their attempts to work with QBE informally failed. The parties' respective appraisers were not able to agree on an estimate or an umpire, for reasons that the plaintiffs attribute to failures on the part of QBE's representatives. Plaintiffs explain that when nothing was moving as it should be with the appraisal process they had no choice but file this lawsuit. Plaintiffs have attached to their oppositions numerous examples of their communications with QBE to support their contentions regarding delay attributable solely to representatives of QBE. The Court expresses no opinion on those communications at this time.

QBE's first motion seeks a dismissal of this action based on the fact that the

lawsuit was filed before the appraisal process was completed, in violation of a term of the policy.

That motion is DENIED because the plaintiffs have adequately demonstrated that their decision to file this lawsuit was justified under the circumstances.

QBE's second motion seeks a stay of this matter so that the appraisal process may continue in accordance with the policy's requirements.

That motion is GRANTED but with restrictions that the Court has detailed below. The dilatory conduct that the plaintiffs are alleging (which includes misrepresentations about the appraisal process by QBE representatives) is best addressed via the plaintiffs' claim for statutory penalties, damages, and attorney's fees, not via a court-determined waiver of the policy's appraisal requirement.¹ That said, if the appraisal process does not move forward after the Court enters this ruling, and if the plaintiffs are able to demonstrate that the failure to do so is attributable to QBE's representatives, then the Court will have no choice but to declare the appraisal provision forfeited and to set this matter for trial by entering a scheduling order.

Accordingly, and for the foregoing reasons;

IT IS ORDERED that the **Motion to Dismiss (Rec. Doc. 10)** filed by QBE Specialty Insurance Co. is **DENIED**.

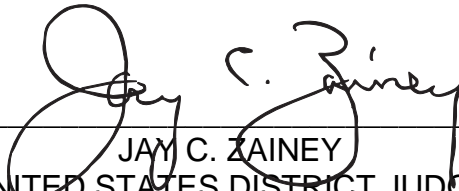
IT IS FURTHER ORDERED that the **Motion to Stay (Rec. Doc. 11)** filed by QBE Specialty Insurance Co. is **GRANTED** subject to the following conditions: Within **15 days** from entry of this Order and Reasons an umpire shall be selected by the parties'

¹ That said, the Court will not be entertaining any motions for summary judgment by QBE to dispose of the plaintiffs' claims for penalties, attorney's fees, and damages prior to trial.

appraisers, and the appraisal process shall be concluded no later than **30 days** thereafter. If the process requires additional time then by agreement of the parties the Court will extend the deadlines given. But if the foregoing deadlines are not met then the Court will have no choice but to reconsider its decision to enforce the appraisal provision.

IT IS FURTHER ORDERED that if the case has not settled by **Friday, May 12, 2023** (if the case does settle then the Court must be notified immediately), then the parties must prepare and file a joint status report (not to exceed 3 double-spaced pages) so that the Court can determine whether a scheduling order should be entered or whether another course of action is appropriate.

March 23, 2023



JAY C. ZAINEY
UNITED STATES DISTRICT JUDGE