

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

BEACHCORNER PROPERTIES, LLC * CIVIL ACTION
VERSUS * NO. 23-1287
INDEPENDENT SPECIALTY * SECTION "M" DIV. (2)
INSURANCE COMPANY

ORDER AND REASONS

Before me is a Motion to Opt-Out of Streamline Settlement Program filed by Defendant Independent Specialty Insurance Company (ECF No. 7). Plaintiff Beachcorner Properties, LLC timely filed an Opposition Memorandum. ECF No. 9. No party requested oral argument in accordance with Local Rule 78.1, and the Court agrees that oral argument is unnecessary.

Having considered the record, the submissions and arguments of counsel, and the applicable law, the motion is DENIED WITHOUT PREJUDICE for the reasons stated herein.

I. BACKGROUND

Plaintiff Beachcorner Properties, LLC filed suit for breach of contract and the duty of good faith and fair dealing against its insurer seeking to recover for losses incurred as a result of Hurricane Ida as well as extra-contractual damages and attorneys' fees alleging failure to properly adjust the loss, failure to reasonably estimate the damages, and failure to timely pay insurance proceeds. ECF No. 1-1. Defendant removed the matter based on diversity jurisdiction. ECF No. 1 ¶¶ III, IV.

Defendant then filed a Motion to Opt-Out of the Streamlined Settlement Program based on its pending Motion to Compel Arbitration, arguing that Plaintiff's claims are subject to mandatory arbitration pursuant to the terms of the governing policy and participation in the SSP will unnecessarily increase the costs and expense of resolving this matter. ECF No. 6; ECF No. 7-1 at

1-3. Plaintiff opposes the motion on the basis that insurance policy mandatory arbitration provisions are only enforceable in Louisiana when the insurer is a foreign entity and defendant is domiciled in Texas. ECF No. 9 at 1. *Compare Parish of St. Charles v. HDI Global Specialty SE*, No. 22-3404, 2023 WL 1419937, at *1 (E.D. La. Jan. 31, 2023) (Ashe, J.) (holding arbitration provision enforceable based on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and equitable estoppel in a case involving intertwined claims against foreign and domestic insurer), *with Next Level Hospitality v. Independent Specialty Insurance Co.*, No. 21-4240, 2023 WL 2771583 (W.D. La. Mar. 31, 2023) (Cain, J.) (denying arbitration in insurance case involving no foreign insurer).

II. LAW AND ANALYSIS

On August 26, 2022, this Court adopted Case Management Order (“CMO”) No. 1 to govern Hurricane Ida claims. CMO #1 includes provisions for certain mandatory initial disclosures as well as a streamlined settlement program (“SSP”) that requires parties to engage in informal settlement conferences as well as court-ordered mediation. *See* Sections 1, 3. Although parties may not opt out of the mandatory initial disclosures set forth in Section 1, they may seek to opt-out of the SSP in Section 3 upon a showing of good cause. *See* Section 3.

The disputed issue of whether the arbitration provision is enforceable is more appropriately resolved by Judge Ashe on Defendant’s pending motion to compel arbitration (ECF No. 6), not in the context of a motion to opt-out of the SSP. At this point, the court cannot find that Defendant has established good cause to opt-out of the SSP based only on a potential arbitration provision. Without Plaintiff’s agreement that arbitration is required, unless and until Judge Ashe finds that arbitration is proper, Defendant has not established good cause to opt-out of the SSP as necessary to prevail on this motion.

III. CONCLUSION

Defendant has not established good cause to opt-out of the SSP program at this time. Should its motion to compel arbitration be granted, then Defendant may re-urge this motion. Accordingly, for the foregoing reasons,

IT IS ORDERED that Defendant's Motion to Opt-Out of Streamline Settlement Program (ECF No. 7) is DENIED WITHOUT PREJUDICE to being re-urged if a motion to compel arbitration is granted.

New Orleans, this 16th day of May, 2023.


DONNA PHILLI'S CURRAULT
UNITED STATES MAGISTRATE JUDGE