

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

VERSAILLES SUR LA MER  
CONDOMINIUM ASSOCIATION,  
INC.,

Plaintiff,

v.

Case No. 6:18-cv-1125-Orl-37TBS

LEXINGTON INSURANCE  
COMPANY,

Defendant.

---

**ORDER**

This action concerns property damage Plaintiff allegedly sustained from Hurricane Irma. (Doc. 2.) On September 15, 2017, Plaintiff submitted a claim to Defendant (“**September Claim**”). (Doc. 17, ¶ 3.) Defendant determined that coverage applied under the insurance policy (“**Policy**”) and made a partial payment on the September Claim. (See Doc. 17, ¶ 4; Doc. 19, p. 2.) Following this partial payment, Defendant represents that on November 10, 2017, Plaintiff notified it of a “new” claim, seeking the full \$10 million policy limit (“**November Claim**”). (Doc. 19, p. 2.) After investigating, Defendant determined that the damage underlying the November Claim was excluded from the Policy’s coverage. (*Id.* at 2-3.)

In May 2018, Plaintiff requested a written appraisal of the loss under the Policy, to which Defendant responded that the request was untimely and inappropriate given the coverage dispute. (Doc. 17, ¶ 7; Doc. 19, p. 3.) So Plaintiff moves the Court to compel

appraisal and to stay these proceedings. (Doc. 17 (“**Motion**”)).

On referral, U.S. Magistrate Judge Thomas B. Smith recommends the Court deny the Motion. (Doc. 24 (“**R&R**”).) In his R&R, he disagrees with Defendant’s characterization of the November Claim and concludes that it “is more accurately viewed not as a separate and unrelated claim, but as a more fully developed explanation of the [September Claim] resulting from Hurricane Irma.” (*Id.* at 6.) Nevertheless, Magistrate Judge Smith finds that Plaintiff waived its right to compel appraisal based on its litigation conduct. (*Id.* at 7–9.) Absent a basis to compel an appraisal, Magistrate Judge Smith finds no need to institute a stay. (*Id.* at 9.)

No party objected to the R&R, and the time for doing so has now passed. Absent objections, the Court has examined the R&R only for clear error. *See Wiand v. Wells Fargo Bank, N.A.*, No. 8:12-cv-557-T-27EAJ, 2016 WL 355490, at \*1 (M.D. Fla. Jan. 28, 2016); *see also Marcort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006). Finding none, the Court concludes that the R&R is due to be adopted and the Motion denied.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. U.S. Magistrate Judge Smith’s Report and Recommendation (Doc. 24) is **ADOPTED, CONFIRMED**, and made a part of this Order.
2. Plaintiff’s Amended Motion to Stay and Compel Appraisal and Incorporated Memorandum of Law (Doc. 17) is **DENIED**.

**DONE AND ORDERED** in Chambers in Orlando, Florida, on August 10, 2018.



  
ROY B. DALTON JR.  
United States District Judge

Copies to:  
Counsel of Record