

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**WESTCHESTER SURPLUS LINES
INSURANCE COMPANY,**

Plaintiff,

v.

Case No: 6:18-cv-1520-Orl-37GJK

**THE SHERWIN CONDOMINIUM
MANAGEMENT ASSOCIATION, INC.,**

Defendant.

REPORT AND RECOMMENDATION

This cause came on for consideration without oral argument on the following motion:

**MOTION: JOINT MOTION FOR APPOINTMENT OF AN UMPIRE
 (Doc. No. 28)**

FILED: March 18, 2019

THEREON it is RECOMMENDED that the motion be GRANTED.

On June 22, 2016, Plaintiff issued a commercial property insurance policy to Defendant for the property located at 2555 South Atlantic Avenue, Daytona Beach Shores, Florida 32118 (the “Property”). Doc. No. 1 at ¶¶ 6, 7. On October 11, 2016, Defendant submitted a claim to Plaintiff “under its insurance policy for alleged damage to the Property that occurred as a result of Hurricane Matthew on or about October 7, 2016.” *Id.* at 9. Plaintiff and Defendant disagree as to the scope of the loss and amount of damages suffered. *Id.* at 4-5. Under the insurance policy, if the parties disagree on the value of the property or the amount of the loss, either may request an appraisal of the loss. *Id.* at ¶ 17. On August 6, 2018, Plaintiff demanded appraisal of the claim pursuant to the

insurance policy. *Id.* at ¶ 15. Each party selected an appraiser. Doc. No. 28 at 2-3. The parties' appraisers have been unable to agree upon a neutral appraisal umpire. *Id.* at 4.

On March 18, 2019, the parties filed a "Joint Motion for Appointment of Umpire" (the "Motion"). Doc. No. 28. The parties invoke a provision in the insurance policy that states that if the parties cannot agree on an appraisal umpire, either party may request that the "selection be made by a judge of a court having jurisdiction." *Id.* at 3 (quoting the insurance policy). The parties ask the "Court [to] appoint an umpire, in accordance with the policy's terms and conditions, to participate in the appraisal process to determine the amount of the loss for the insurance claim at issue." *Id.* at 5. On March 27, 2019, the Court requested that the parties each present three candidates, along with the candidates' CVs. Doc. No. 30. On April 10, 2019, the parties submitted their lists of candidates. Doc. Nos. 31, 32.

The Court carefully considered the pleadings and the candidates' CVs. After carefully reviewing the six CVs, the Court finds that John A. Voelpel, III, is thoroughly qualified to serve as an appraisal umpire. As per Mr. Voelpel's CV, he is local to central Florida. Doc. No. 32-1. He has claims experience working for insurance companies and has been employed at Voelpel Claim Service, Inc., since 1998. *Id.* Not only is he a WIND Certified Umpire, but he has been a member of the Umpire Committee since its inception and teaches umpire and appraiser certifications. *Id.* The Court is confident that Mr. Voelpel has the knowledge and experience to properly evaluate the claim at issue in this case.

In the Amended Complaint, the only relief Plaintiff requests is "that this Court appoint a 'competent and impartial' umpire, pursuant to the Westchester policy, to participate in determining the amount of the loss for the claim at issue in this case" Doc. No. 13 at ¶ 28. As this is the

relief requested in the Motion, it is recommended that the case be closed if the Court grants the Motion.

Accordingly, it is **RECOMMENDED** as follows:

1. That the Motion (Doc. No. 28) be **GRANTED**;
2. That John A. Voelpel, III, be appointed to serve as neutral appraisal umpire for and during the insurance appraisal process, pursuant to the terms of the insurance contract between the parties; and
3. That the Clerk be directed to close the case.

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. Failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. 11th Cir. R. 3-1.

RECOMMENDED in Orlando, Florida, on April 12, 2019.



GREGORY J. KELLY
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties