

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

**TIM FORD,
Plaintiff,**

v.

**GREAT AMERICAN ASSURANCE
COMPANY AND STEPHEN
CHRISTOPHER WADE,
Defendants.**

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CIVIL ACTION NO. W-15-CV-088

ORDER

Before the Court is Plaintiff Tim Ford's Opposed Motion to Strike Steven J. Badger as Defendant Great American Assurance Company's Designated Appraiser. Having reviewed the Motion, the Response, the evidence, and the applicable legal authority, the Court finds that the Motion has merit and should be **GRANTED.**

I. Factual and Procedural Background

This is an insurance coverage dispute timely removed from the 414th Judicial District Court of McLennan County, Texas, based on diversity jurisdiction. See 28 U.S.C. §§ 1332(a) and 1414; Doc. 1. Plaintiff Tim Ford ("Plaintiff") alleges claims against Defendants Great American Assurance Company ("GAAC") and Stephen Christopher Wade for negligence, breach of contract, violations of the Texas Deceptive Trade Practices Act, violations of the Texas Insurance Code, breach of common law duty of good faith and fair dealing, breach of fiduciary duty, unfair insurance practices, misrepresentations,

and common law fraud by negligent misrepresentation. Doc. 1-3 at 5-16. Plaintiff seeks over \$1,000,000 in damages based on two insurance claims that he made against a farm and range policy in which GAAC issued. The first claim relates to residential plumbing loss whereas the second claim relates to storm loss.

Plaintiff provided GAAC with notice of his disagreement with the damages its adjuster assessed. Consequently, on April 15, 2015, GAAC invoked the appraisal provision contained within the insurance policy at issue. The appraisal clause in question provides in relevant part as follows:

Appraisal

If we and you disagree on the value of the property or the amount of loss either may make a written demand for appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser within 20 days of the demand.

Doc. 10-1 at 25. GAAC designated Steven J. Badger (“Badger”)—a construction and insurance defense attorney—as its appraiser. Plaintiff filed the instant Motion to Strike Badger as GAAC’s designated appraiser contending that he is impartial, and thus GAAC is not in compliance with the insurance policy’s appraisal provision that requires an impartial appraiser. GAAC refutes Plaintiff’s contention arguing that there is no evidence showing Badger is either biased or impartial in this case.

II. Analysis

The Court finds that Plaintiff’s Motion is meritorious, and therefore Badger is stricken as GAAC’s designated appraiser. Plaintiff’s briefing and evidence in

support persuades the Court that Badger cannot serve as an impartial appraiser. More specifically, Plaintiff's exhibits include a document titled "Roofing Subrogation Handbook"¹ and two articles² pertaining to hail claims in which Badger authored. Each of these items portrays Badger's propensity for bias in favor of insurance companies. Moreover, Badger's occupation as an attorney who frequently represents insurance companies inclines the Court to agree with Plaintiff's argument that he is unable to serve as an objective appraiser capable of reviewing the case at hand without partisanship. Finally, Plaintiff explains that Badger testified to the Texas Senate Business and Commerce Committee in favor of Senate Bill No. 1628,³ which Plaintiff describes as pro-insurance company legislation. The Court notes that GAAC's Response does not refute Plaintiff's characterization of the bill.

GAAC does claim, however, that Plaintiff's evidence "at most[] shows that . . . Badger has experience in the field [of property damage appraisal]." Doc. 10 at 6. While the evidence does illustrate that Badger possesses experience in this area, the Court disagrees with GAAC's assessment that it falls short of proving impartiality in the form of bias and/or partisanship against Plaintiff. To the contrary, the Court finds that the evidence shows that Badger cannot serve as an

¹ Doc. 7 at 10-22.

² Doc. 7 at 23-29.

³ The engrossed iteration of the proposed senate bill is available at: <http://www.capitol.state.tx.us/tlodocs/84R/billtext/pdf/SB01628E.pdf#navpanes=0>.

impartial appraiser in accordance with the insurance policy's requirements. Consequently, Badger is stricken as GAAC's appointed appraiser.

III. Conclusion

For the foregoing reasons, Plaintiff Tim Ford's Opposed Motion to Strike Steven J. Badger as Defendant Great American Assurance Company's Designated Appraiser is **GRANTED**. It is **ORDERED** that Steven J. Badger be stricken from participating as GAAC's appointed appraiser in this case.

SIGNED this 9 day of June, 2015.



WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE