UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ALLAH-PAK PROPERTIES, LLC,	§	
	§	
Plaintiff,	§	
V.	§	CIVIL ACTION NO. 2:23-CV-00301
	§	
CENTURY SURETY COMPANY,	§	
	§	
Defendants.	§	

ORDER

This case arises from the parties' disagreement about whether an insurance policy covers damage to Plaintiff's property. The issue presented: When an insurance policy excludes coverage for loss or damage caused directly or indirectly by wind or hail, regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage, is a defendant entitled to summary judgment even if the defendant has not proven that the wind was the *sole* cause of the damage? The parties agree that the insurance policy at issue unambiguously excludes coverage for loss or damage caused by wind or hail. Defendant moves for summary judgment, arguing that the exclusion encompasses damage to the electrical panel because wind *indirectly* caused that damage. (D.E. 21). Plaintiff concedes that wind damaged the roof, which allowed water to seep into the property and cause damage to the electrical panel. (D.E. 23). In short, Plaintiff agrees that the wind indirectly damaged the electrical panel, but Plaintiff says that the policy's text requires that the wind be the *sole* cause of the damage for the policy to exclude it. The Court disagrees with Plaintiff.

Because a windstorm caused—albeit indirectly—damage to the electrical panel, the text of the exclusion covers that damage. Accordingly, Defendant did not breach the insurance contract and is therefore entitled to summary judgment. Accordingly, the Court **GRANTS in its entirety** Defendant's motion for summary judgment. (D.E. 21).

I. Background

A. Factual

The parties have helpfully narrowed the issues relevant to resolving this summary judgment motion. *See* (D.E. 23, p. 5); (D.E. 25, p. 1–2); (D.E. 27). Accordingly, the Court discusses only those facts relevant to deciding the instant motion.

Plaintiff Allah-Pak Properties LLC owns a property ("the property") in Corpus Christi, Texas. (D.E. 21-2, p. 5; D.E. 21-3, p. 4). In summer of 2022, water seeped into the property's utility room, causing damage to the property's electrical equipment and power loss in the summer of 2022. (D.E. 21-3, p. 9).

A little under a week after the power loss, Plaintiff notified Defendant about the power loss. (D.E. 21-1, p. 2) (loss notice). So, Defendant's third-party adjuster and administrator assigned an engineer to investigate Plaintiff's claim. *Id.* at 16. The engineer visited the property later that month, and he wrote a report once he finished his investigation. (D.E. 21-3, p. 4). His report concluded that "water intruded the electrical equipment in the electrical room through roof mounted conduit fittings and associated roof penetrations" and that "the root cause for the water intrusion was improper maintenance practices." *Id.* at 10. Additionally, Plaintiff's engineer later determined that the roof damage resulted from "a severe windstorm" followed by a "a heavy rainstorm" that caused water to enter through the roof and damage the electrical panels. (D.E. 21-6, p. 2). Specifically, his report concluded that the "likely" cause of the "breaks in the seal" was the "wind causing the wires to swing which imposed lateral pressure onto the conduit pipes which broke the seal." *Id.* at 10.

In fall 2022, Defendant denied Plaintiff coverage. (D.E. 21-4, p. 2). Defendant declined coverage because "ongoing water intrusions and lack of roof maintenance" caused the damage. *Id.*

at 4. The letter denying coverage also noted that—even though the initial report did not find evidence of wind damage—that wind and hail damages were "excluded regardless." *Id.* at 9.

B. Procedural

As a result, Plaintiff sued Defendant for myriad claims, including breach of contract. (D.E. 1, p. 4–8). Plaintiff clarified for the Court that it seeks, first and foremost, a finding that Defendant breached the insurance contract. (D.E. 27, p. 1). Plaintiff also sues for deceptive insurance practices and late payment of claims (contingent on Plaintiff receiving a favorable ruling on the breach of contract claim). *Id.*

Defendant moves for summary judgment on all claims, arguing that Defendant never breached the parties' contract, and that lack of breach entitles Defendant to summary judgment on the rest of Plaintiff's claims. (D.E. 21, p. 13). In its response, Plaintiff concedes "that Defendant does not owe any damages for the roof, damages related to extra expenses incurred, or damages resulting from business income loss." (D.E. 23, p. 5). Accordingly, the only damages at issue are for the "damage of the property's electrical panel" resulting in $144,237.00. *Id.*

II. Legal Standard

"Summary judgment is proper 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Terral River Serv., Inc. v. SCF Marine Inc.*, 20 F.4th 1015, 1017–18 (5th Cir. 2021) (quoting FED. R. CIV. P. 56(a)). The moving party bears the initial burden of informing the district court of the basis for its motion and identifying the portions of the record it believes shows the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the movant meets this requirement, "the burden shifts to the nonmoving party to show with 'significant probative evidence'" that a genuine issue of material fact exists. *Hamilton v. Segue Software, Inc.*, 232 F.3d

473, 477 (5th Cir. 2000) (per curiam) (citing *Conkling v. Turner*, 18 F.3d 1285, 1295 (5th Cir. 1994)). The nonmoving party "must identify specific evidence in the summary judgment record demonstrating that there is a material fact issue[.]" *Baranowski v. Hart*, 486 F.3d 112, 119 (5th Cir. 2007). "The record must be viewed in the light most favorable to the non-moving party; all justifiable inferences will be drawn in the non-movant's favor." *Env't Conservation Org. v. City of Dallas*, 529 F.3d 519, 524 (5th Cir. 2008) (citing *TIG Ins. Co. v. Sedgwick James of Washington*, 276 F.3d 754, 759 (5th Cir. 2002)). "When assessing whether a dispute to any material fact exists," courts must "refrain from making credibility determinations or weighing the evidence." *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (citing *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2007).

III. Analysis

Winnowed down, the issue on summary judgment is a legal question of textual interpretation: does the exclusion limit itself to damage that is solely caused by wind? If it does, the Court must deny summary judgment. If it doesn't, Defendant is entitled to summary judgment.

A. Legal Framework for Insurance Contracts

"[T]he general rules of contract construction apply to the interpretation of insurance contracts." *Progressive Cnty. Mut. Ins. Co. v. Sink*, 107 S.W.3d 547, 551 (Tex. 2003), *as modified on denial of reh'g* (May 15, 2003) (first citing *Grain Dealers Mut. Ins. Co. v. McKee*, 943 S.W.2d 455, 458 (Tex. 1997); and then citing *State Farm Life Ins. Co. v. Beaston*, 907 S.W.2d 430, 433 (Tex. 1995)). When interpreting an insurance contract, the Court "must strive to give effect to the written expression of the parties' intent" by reading the contract as a whole. *Beaston*, 907 S.W.2d at 433. Insurance contract terms "are given their ordinary and generally accepted meaning unless the policy shows the words were meant in a technical or different sense." *Sec. Mut. Cas. Co. v.*

Johnson, 584 S.W.2d 703, 704 (Tex. 1979) (citing *Guardian Life Insurance Co. of America v. Scott*, 405 S.W.2d 64, 65 (Tex. 1966)). When "the language is plain and unambiguous, courts must enforce the contract as made by the parties[.]" *Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 753 (Tex. 2006). But "[c]ourts resolve ambiguities in favor of the insured." *Dillon Gage Inc. of Dallas v. Certain Underwriters at Lloyd's, Subscribing to Policy No. EE1701590*, 440 F. Supp. 3d 587, 591 (N.D. Tex. 2020) (Starr, J.) (citing *Guar. Nat'l Ins. Co. v. Vic Mfg. Co.*, 143 F.3d 192, 193 (5th Cir. 1998)), *aff'd sub nom., Dillon Gage, Inc. of Dallas v. Certain Underwriters at Lloyds*, 26 F.4th 323 (5th Cir. 2022).

Under Texas law, there is a burden-shifting framework for insurance disputes. "Initially, the insured has the burden of establishing coverage under the terms of the policy." *Gilbert Tex. Const., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 124 (Tex. 2010) (citing *Ulico Cas. Co. v. Allied Pilots Ass'n*, 262 S.W.3d 773, 782 (Tex. 2008)). "If the insured proves coverage, then to avoid liability the insurer must prove the loss is within an exclusion." *Id.* (citing *Ulico*, 262 S.W.3d at 782). "If the insurer proves that an exclusion applies, the burden shifts back to the insured to show that an exception to the exclusion brings the claim back within coverage." *Id.* (citations omitted).

B. Defendant's Entitlement to Summary Judgment

i. Plaintiff meets its burden to establish coverage.

Under the policy, Defendant agreed to pay for damage to Plaintiff's covered property (D.E. 21-9, p. 15). Accordingly, Plaintiff has met its initial burden to show that the policy covers the property at issue. *Gilbert*, 327 S.W.3d at 124. So, the burden shifts to Defendant to show that the damage to the covered property falls within an exclusion in the policy. *Id.*

ii. Defendant meets its burden to prove the loss falls within the exclusion.

The Court first reviews the summary judgment record, given the parties' relative agreement on the facts, and then ascertains the meaning of the policy's plain text to determine whether the loss falls within the exclusion.

The essential facts are not in dispute. Plaintiff concedes that wind damaged the roof, which allowed water to intrude into the electrical room. (D.E. 23, p. 4) ("[Plaintiff] further does not dispute that wind did in fact damage the roof, which allowed water in[]trusion into the interior of the property and that these damages are not covered under the policy's Wind or Hailstorm Exclusion."). From there, Plaintiff does not adduce any competent summary judgment evidence to contest that a windstorm caused (at least indirectly) damage that allowed water to ultimately damage the electrical room. *See id.* Indeed, Plaintiff's own expert indicates that "a severe windstorm" caused damage to the roof four months before the leak and that—at the time of the leak—wind caused damage to conduit pipes on the roof, allowing water to leak into the electrical room. (D.E. 21-6, p. 10). Rather, Plaintiff points to other potential causes, such as the failure of the circuit breakers to trip and prolonged exposure to high humidity, in an attempt to argue that the exclusion does not apply. (D.E. 23, p. 4). But, as discussed below, the fact that there were other causes is not legally relevant. Accordingly, there is no genuine issue of material fact about what the chain of causation was or whether the exclusion applies.

In short, the chain of events occurred as follows: Plaintiff previously failed to implement proper maintenance practices relating to the roof-mounted conduit fittings. (D.E. 23, p. 4). On April 11, 2022, a windstorm caused damage to Plaintiff's roof. (D.E. 21-6, p. 2). At some point, wind caused electrical wires to swing, imposing pressure on the electrical conduits that penetrate the roof of the electrical room. (D.E. 21-6, p. 10); (D.E. 21-7, p. 24, 32–33) (testimony that wind

hitting electrical wire and causing it to swing causes damage in the area leading to the electrical room). That caused the seals on the roof to break, allowing water to seep in. (D.E. 21-6, p. 10). In other words, the roof's damage meant that water could leak into the electrical room. *See* (D.E. 21-6, p. 2; D.E. 21-7, p. 33). The water that leaked in caused the circuit breakers to malfunction and ultimately fail. (D.E. 21-7, p. 22) (Plaintiff's expert opining that the "circuit breakers malfunctioned because the water got to them," inhibiting the circuit breakers' ability "to regulate the flow of electricity[.]"). That failure caused electrical arcing and all the other electrical equipment to fail. (D.E. 21-7, p. 22) (Plaintiff's expert concluding that "[t]he circuit breakers failed, which caused all of the other equipment to fail").

Again, there is no genuine dispute between the parties that a windstorm, wind overtime, or a combination of the two, among other causes, led to the property's damage. That said, the Court must determine whether—if wind damaged the property—that loss is covered under the plain text of the policy.

So, the Court turns to ascertaining the plain text's meaning. The policy's text is not ambiguous. The policy does not cover damage that was

> Caused directly or indirectly by [w]indstorm or [h]ail, regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage; or . . . [c]aused by rain, water, snow, sand or dust, whether driven by wind or not, if that loss or damage would not have occurred but for the windstorm or hail.

(D.E. 21-4, p. 9). Plaintiff argues that this text requires that the *sole* cause of the electrical panel's damage must be wind. (D.E. 23, p. 8). Defendant, on the other hand, argues that the text expressly encompasses damage caused by the wind when that causation is either direct or indirect. (D.E. 25, p. 3). Defendant has the better reading of the text.

Texas common law treats multiple causes "differently depending on whether they are concurrent or independent." *Dillon Gage*, 440 F. Supp. 3d at 593 (citing *JAW The Pointe, L.L.C.,*

v. Lexington Ins. Co., 460 S.W. 3d 597, 608 (Tex. 2015). But this "common-law default can be . . . displaced by contract with an anti-concurrent-causation clause." *Id.* "Such clauses tend to state that the insurer will not pay for any 'loss or damage caused directly or indirectly by any' excluded cause or event, 'regardless of any other cause or event that contributes concurrently or in any sequence to the loss.'" *Id.* (citing *JAW The Pointe, L.L.C.*, 460 S.W.3d at 607). Read together, exclusions and anti-concurrent-causation clauses exclude from coverage losses caused by a combination of a covered risk and caused by an excluded risk. *Id.* (citation omitted).

In this case, the exclusion contains an anti-concurrent-causation clause: the policy does not cover damage that was "[c]aused directly or indirectly by [w]indstorm or [h]ail, regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage." (D.E. 21-4, p. 9). The text means what it says: if a windstorm directly caused damage *or* if a windstorm indirectly caused damage, then that damage falls within the exclusion's ambit. Accordingly, the exclusionary clause is not ambiguous.[1]

The text unambiguously excludes coverage for damaged caused by windstorm or hail, even if another event contributed concurrently or in any sequence with the excluded damage. *See ARM Props. Mgmt. Grp. V. RSUI Indem. Co.*, 400 F. App'x 938, 941 (5th Cir. 2010); *Leonard v. Nationwide Mut. Ins. Co.*, 499 F.3d 419, 430 (5th Cir. 2007)). Indeed, the "plain language of the policy leaves [this Court] no interpretive leeway to conclude that recovery" is possible if the windstorm contributed to the damage at issue. *Leonard*, 499 F.3d at 430. Even if the electrical panel's damage was "synergistically caused" by wind, water, and circuit breaker failure, the fact

[1] While the parties disagree on what the exclusion means, both parties agreed at the last status conference that the exclusion's text is unambiguous.

that the windstorm contributed (even in part) to the damage, means that the damage falls in the exclusion. *See id.*

With this understanding of the text, the Court must conclude that the exclusion applies. The Court has already reviewed the record—and the parties agree that—somewhere in the chain of causation, the electrical panel's damage resulted from a windstorm. Again, the record reflects that a failure of the circuit breakers was the direct cause of the electrical panel's damage.[2] Indeed, Plaintiff's expert concluded that if the circuit breakers had not failed, and the water had only damaged the electrical components, the damage would have been different or nonexistent. (D.E. 21-7, p. 22). But that would only help Plaintiff if the policy's plain language required that the wind be the exclusive, sole, or direct cause of the damage. The policy does not so require. Instead, the exclusion covers damage caused indirectly by windstorm. That is the case here. Again, even if the electrical panel's damage was "synergistically caused" by wind and other causes, the fact that the windstorm contributed (even in part) to the damage, means that the damage falls in the exclusion. *Leonard*, 499 F.3d at 430.

Accordingly, Defendant meets its burden to show that there is no genuine dispute of material fact that the exclusion applies. *Gilbert*, 327 S.W.3d at 124. The burden now shifts back to Plaintiff to show why coverage is not excluded. *Id.*; *Praetorian Ins. Co. v. Arabia Shrine Ctr. Houston*, No. 4:14-CV-3281, 2016 WL 687564, at *27 (S.D. Tex. Feb. 19, 2016) (Ellison, J.) (requiring an insured party to demonstrate that an exception to the exclusion bring coverage back after the insurer demonstrated an exception applies).

[2] In fact, the record establishes that there were multiple but-for causes of the electrical panel damage. Had the wind not caused the wires to swing, or had the water not leaked, or had the circuit breakers not failed, the damage to the electrical panel likely would not have occurred (or—at the least—would likely not have been as extensive).

iii. Plaintiff fails to show there is an exception to the exclusion that brings coverage back.

Plaintiff does not argue that an exception to the exclusion brings back coverage. *See* (D.E. 23). Instead, Plaintiff hangs its hat on the textual argument that the exclusion requires that the electrical panel's damage be *solely* caused by a windstorm. *See id.* at 8. As discussed above, Plaintiff's argument would read out "indirectly" and the text's anti-concurrent-causation clause ("regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage"), in contravention of the plain text and precedent. Accordingly, because the parties agree that wind caused the damage, and the policy's text excludes wind damage from coverage, Defendant is entitled to summary judgment.

IV. Conclusion

In sum, Plaintiff met its initial burden to show that the policy covers damage to the electrical panel. Then, Defendant met its burden to show that the windstorm exclusion applies. Finally, Plaintiff failed to show there is an exception to the exclusion. So, Defendant is entitled to summary judgment. Accordingly, the Court **GRANTS in its entirety** Defendant's motion for summary judgment. (D.E. 21). The Court will enter a final judgment separately.

SO ORDERED.

DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Signed: Corpus Christi, Texas
August 8th, 2025