

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

SHERRI ELENZ

PLAINTIFF

v.

CIVIL ACTION NO. 3:24-CV-253-SA-RP

STATE FARM FIRE AND CASUALTY COMPANY

DEFENDANT

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF RESPONSE IN
OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT, OR ALTERNATIVELY, PARTIAL SUMMARY JUDGMENT**

COMES NOW, Sherri Elenz (“Plaintiff”), through counsel, and presents her Memorandum in Support of Response in Opposition to Defendant’s Motion for Summary Judgment, or Alternatively, Partial Summary Judgment, as follows:

INTRODUCTION

The Court should deny State Farm’s Motion for Summary Judgment. As set forth in Plaintiff’s Memorandum Response in Opposition to State Farm’s Motion to Prohibit the Testimony of Plaintiff’s Experts, Plaintiff’s expert should not be stricken but should be permitted to testify at trial of this case. Plaintiff incorporates the arguments, exhibits, and authority in Plaintiff’s Memorandum and Response in Opposition as is fully set forth herein.

In addition, genuine issues of material fact exist as to whether the Plaintiff can establish the actual cash value of the cost to repair the dwelling. State Farm’s own repair estimate in this case shows that State Farm does not depreciate every line item in its estimate. State Farm also caps depreciation at 80%, so at worst Plaintiff would simply be limited in the amount of recoverable ACV. State Farm’s depreciation calculator, although performed in Xactimate, is not complex. State Farm takes the age of the material and divides it by its life expectancy/condition.

Accordingly, the Plaintiff should be permitted to put forth evidence at trial as to the recoverable ACV of the damaged items in Plaintiff's dwelling, including her roof, which is a 30-year roof. For these reasons, this Court should deny State Farm's Motion for Summary Judgment.

FACTS

On January 3, 2023, Ms. Elenz's dwelling suffered damage as a result of tornadic winds estimated to be 70 mph.¹ It is undisputed that the winds caused damage to the Elenz's dwelling and temporary repairs were made to the roof with State Farm's approval. Mr. Elenz hired Roof and Nail, LLC to perform the repairs. Christy Gardner with Roof and Nail, LLC notes on the first page of her estimate that "in 2004, the dwelling was inspected by Desoto building committee" and approved internal inspection."² This estimate was received by State Farm from Roof and Nail, LLC during the claims adjustment.³ Ms. Gardner further notes an inspection occurring by State Farm, claim # 24-Q161-164 on the dwelling in 2011 that noted no damage to the interior of the dwelling.⁴ Ms. Gardner further notes that the dwelling had a shifted gable and multiple broken 2 x 8 rafters.⁵

As a result, Roof and Nail, LLC "was given approval [by State Farm] to do a temp framing repair to prevent further structural damages. Roof and Nail replaced the right supporting the beams and "had to replace 2ft of broken OSB [or plywood] down the ridge, and placed a tarp." ⁶

The dispute in this case concerns the extent of that damage and State Farm's refusal to attribute the damage to the structural framing of her attic to that wind event. During adjustment

¹ See Doc. 36-2, Mr. Griffin Report at SF 0404 ("There was a damaging wind event reported on January 3, 2023, the reported date of loss. NOAA indicated that a tornado event ... occurred in the vicinity of the subject property and had a reported maximum windspeed of 70 miles per hours (mph) and path width of 100 feet").

² See Doc 44-1, Roof and Nail, LLC Estimate SF at 1151.

³ See Doc 44-1, Roof and Nail, LLC Estimate SF 1151 to 1156.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

of the insurance claim, State Farm called in an expert engineer with Rimkus, Luke A. Griffin, to determine whether, in his opinion, the damage to multiple rafters in the attic. Mr. Griffin concluded in part that the damage to the structural framing was not damage under the policy but was the result of the framing workmanship at the time of construction.⁷

On January 28, 2025, Mr. Montgomery inspected the Plaintiff's dwelling to determine whether he could say within a reasonable degree of probability within the field of engineering whether the Plaintiff's dwelling had been damaged by tornadic winds occurring on January 3, 2023. Mr. Montgomery "investigation was conducted based on [his] experience as a licensed professional engineer with specific experience in the area of structural analysis and design."

Mr. Montgomery took photos of the dwelling and personally inspected the interior and exterior of the dwelling, including the attic. In his report, Mr. Montgomery notes the existence of a crack between the roof and the side of an exterior window.⁸ He notes lateral damage, not vertical damage. According to Mr. Montgomery, lateral damage is consistent with damage caused by winds.

Mr. Montgomery notes his agreement with Mr. Griffin's expert report and bases his damages opinion on the same undisputed concepts about damage to structures caused by wind:

...as wind flows around a building, positive and negative air pressures are distributed across the exterior surfaces, relative to the interior air pressure. Generally, windward wall surfaces are subjected to positive air pressure and leeward wall surfaces are subjected to lower air pressure. The combined effect of windward and leeward air pressures results in lateral loads against the structure. Roofs, depending on the shape and slope, are subjected to a combination of inward and outward air pressures, which result in both lateral and vertical loads on the structure.

High wind loads may damage a building in three generalized ways:

- Discrete components and claddings, which are part of the building envelope, may become partially or fully detached. Common types of elements include roofing, roof and wall sheathing, and exterior wall claddings. After wind-

⁷ See Doc. 36-2, Mr. Griffin Report at SF 0401.

⁸ See Doc. 31-6 at p. 9.

created openings develop in the building envelope, secondary damage to interior components may occur.

- The main, lateral force-resisting system of the building is subjected to shear and overturning loads. In a conventionally wood-framed structure, shear walls, which are typically also exterior walls, resist displacement, uplift, or overturning of the building. As such, they require continuity in connections from the roof framing, through the walls, and into the foundation. If the shear walls deform excessively or detach from the foundation, collapse may occur.

- Windborne debris may strike the building and cause acute damage to isolated areas. Large objects, such as trees, may also cause damage that attenuates through the structure.⁹

Thus, both Mr. Montgomery and State Farm's expert agree that high winds can cause damage to residential dwellings, including detached components and claddings.

In addition to other damages, Mr. Montgomery documents a post from the front porch removed by wind.¹⁰ He also verified via google earth imagery that a large tree in the front yard had been blown down during the storm as represented to him by Rachel Conner who lived with Ms. Elenz at the time of the loss.¹¹

He documents a broken rafter that he attributes to the wind. He notes that the crack is clean (not dusty) within the crack.¹² He also notes discoloration in compromised rafters, indicating the damage is fresh and more likely than not caused by the recent wind event, as opposed to construction that occurred decades earlier.¹³

State Farm generated a repair estimate for the damage to the Plaintiff's dwelling, excluding the damage to the attic and for repair of the roof, which is at issue in the present matter. As noted in State Farm's estimate, State Farm simply divides the age of the item by the expected life expectancy to arrive at depreciation.¹⁴ To calculate depreciation on the downspouts and gutters,

⁹ See Doc. 31-6 at p. 27.

¹⁰ See Doc. 31-6 at p. 18.

¹¹ See Doc. 31-6 at p. 3.

¹² See Doc. 31-6 at p. 20.

¹³ See Doc. 31-6 at p. 22.

¹⁴ See Doc 44-2 State Farm Repair Estimate 1051-1085 at SF 1054.

for instance, State Farm found the life expectancy to be 25 and divided by the age of the gutters, which it found to be ten (10) years old.¹⁵ State Farm also capped depreciation at 80% on its estimate in which depreciation based on age would have exceeded 80%.¹⁶

STANDARD

This Court grants summary judgment “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” *Commons Oxford, LLC v. Phillips*, 2024 WL 4479866, at *1 (N.D. Miss. Oct. 11, 2024) (citing FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *Weaver v. CCA Indus., Inc.*, 529 F.3d 335, 339 (5th Cir. 2008)).

“The party moving for summary judgment bears the initial responsibility of informing the Court of the basis for its motion and identifying those portions of the record it believes demonstrate the absence of a genuine dispute of material fact.” *Phillips*, 2024 WL 4479866, at *1 (citing *Celotex Corp.*, 477 U.S. at 323). Under Rule 56(a), the burden then shifts to the nonmovant to “go beyond the pleadings and by ... affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a genuine issue for trial.’ ” *Id.* (citing *Celotex Corp.*, 477 U.S. at 324; *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 282 (5th Cir. 2001); *Willis v. Roche Biomedical Labs., Inc.*, 61 F.3d 313, 315 (5th Cir. 1995)).

“When the parties dispute the facts, the Court must view the facts and draw reasonable inferences in the light most favorable to the non-moving party.” *Id.* (citing *Scott v. Harris*, 550 U.S. 372, 378, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) (internal citations omitted)). “However, a nonmovant may not overcome the summary judgment standard with conclusional allegations,

¹⁵ See Doc 44-2, State Farm Repair Estimate 1051-1085 at SF 1054.

¹⁶ See Doc 44-2, State Farm Repair Estimate at 1056-1057.

unsupported assertions, or presentation of only a scintilla of evidence.” *Id.* (citing *McChure v. Boles*, 490 F. App'x 666, 667 (5th Cir. 2012) (per curiam) (citing *Hathaway v. Bazany*, 507 F.3d 312, 319 (5th Cir. 2007))).

ARGUMENT

This Court should not grant summary judgment. The Plaintiff does not need an expert witness to establish age/life/condition of the property, and State Farm caps depreciation at 80%.

First, Plaintiff can establish replacement cost value through its expert witnesses from Roof and Nail, LLC and the repair cost estimate. In *Ladnier v. State Farm Fire & Cas. Co.*, 2023 WL 3830366, at *5 (S.D. Miss. June 5, 2023), this Court stated,

The Court agrees with Plaintiffs that they may present evidence of replacement cost value, subject to evidence of depreciation. In support of its contention that evidence of replacement cost value may be submitted at trial, Plaintiff cites *United Servs. Auto Ass'n v. Lisanby*, a decision of the Mississippi Supreme Court finding that the trial court licitly permitted plaintiffs to introduce evidence of replacement costs. 47 So. 3d 1172, 1179-80 (Miss. 2010). Where the insurer argued that plaintiffs should have been “ ‘required by the trial court to restrict their evidence to actual cash value of the loss,’ ” the Court noted that there was no “evidence in the record that the verdict was based on replacement costs alone, and the evidence adduced at trial included an actual cash value of \$1.6 million.” *Id.*; see also *Sanders v. Nationwide Mut. Fire Ins. Co.*, No. 1:07CV988-LTS-RHW, 2008 WL 5342116, at *2 (S.D. Miss. Dec. 17, 2008) (“Because replacement cost is a component of the calculation of actual cash value, evidence of replacement cost is admissible at trial.”).⁴ Likewise, here, there is no disagreement that replacement cost value is a defined component of actual cash value. In the Court's opinion, Mr. Scott does not necessarily need to comment on depreciation for his opinion to be admissible. See *Ayoub v. Chubb Lloyds Ins. Co. of Tex.*, No. EP-13-CA-58, 2014 WL 12489692, at *1 (W.D. Tex. Apr. 29, 2014) (permitting an expert to testify only on the subject of replacement costs and not depreciation, although actual cash value would be determined by deducting depreciation therefrom); see also *Shadow Lake Mgmt. Co., Inc. v. Landmark Am. Ins. Co.*, Civ. No. 06-4357, 2009 WL 362103, at *2 (E.D. La. Feb. 9, 2009); *Atkins v. Lexington Ins. Co.*, Civ. No. 07-6977, 2008 WL 4457684, at *3 (E.D. La. Sep. 29, 2008); *Pontchartrain Gardens, Inc. v. State Farm Gen. Ins. Co.*, Civ. No. 07-7965, 2009 WL 10687556, at *2 (E.D. La. Jan. 13, 2009). Therefore, and per the *Lisanby* case, Mr. Scott's opinion regarding replacement cost value is admissible as a component of actual cash value, subject to evidence of depreciation presented at trial.

Under *Ladnier*, the replacement cost value is relevant to having an amount from which to depreciate. Therefore, this Court should not prohibit Hamlet and Gardner from testifying as to replacement cost values. With the replacement cost value, the Plaintiff can put forth evidence of depreciation at trial. *Id.* at *5 (S.D. Miss. June 5, 2023) (noting expert’s opinion “regarding replacement cost value is admissible as a component of actual cash value, subject to evidence of depreciation presented at trial.”).

In the present case, Plaintiff should be permitted to put forth evidence of the age, condition, life expectancy to establish depreciation and ultimately actual cash value. The Plaintiff, for instance, can put forth evidence that the dwelling was built in 1999, and the shingles on the roof are 30 year shingles. Thus, the life expectancy would be 30 years. The Plaintiff would simply have to put on evidence of the age of the roof to determine depreciation under the insurance policy.

State Farm, for instance, generated a repair estimate for the damage to the Plaintiff’s dwelling, excluding the damage to the attic and for repair of the roof, which is at issue in the present matter. As noted in State Farm’s estimate, State Farm simply divides the age of the item by the expected life expectancy to arrive at depreciation.¹⁷

To calculate depreciation on the downspouts and gutters, for instance, State Farm found the life expectancy to be 25 and divided by the age of the gutters, which it found to be ten (10) years old.¹⁸ State Farm also capped depreciation at 80% on its estimate in which depreciation based on age would have exceeded 80%.¹⁹ State Farm found the shingles on the Plaintiff’s shed to be 30 years old and capped depreciation at 80%.²⁰ At worst for the Plaintiff, ACV would be capped

¹⁷ See Doc 44-2, State Farm Repair Estimate 1051-1085 at SF 1054.

¹⁸ See Doc 44-2, State Farm Repair Estimate 1051-1085 at SF 1054.

¹⁹ See Doc 44-2, State Farm Repair Estimate at 1056-1057.

²⁰ See Doc 44-2, State Farm Repair Estimate at 1057 (line item 45).

at 80% of the replacement cost, if Plaintiff did not put on sufficient depreciation evidence. This is not a basis for summary judgment.

CONCLUSION

This Court should deny State Farm's Motion for Summary Judgment. Plaintiff's experts should be permitted to testify, and Plaintiffs can testify as to the age/life/condition of the items at issue for purposes of establishing depreciation.

This, the 16th day of June, 2025.

Respectfully submitted,

SHERRI ELENZ

By: /s/ Michael A. Heilman
Michael A. Heilman

OF COUNSEL:

Michael A. Heilman (MSB No. 2223)
John W. Nisbett (MSB No. 103120)
E. Taylor Polk (MSB No. 103653)
HEILMAN NISBETT POLK, P.A.
Meadowbrook Office Park
4266 Interstate 55 North, Suite 106
Jackson, Mississippi 39211
Telephone: (601) 914-1025
Facsimile: (601) 944-2915
mheilman@hnplawyers.com
jnisbett@hnplawyers.com
tpolk@hnplawyers.com

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification to counsel of record.

This, the 16th day of June, 2025.

/s/ Michael A. Heilman

Michael A. Heilman