IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JOHNNY SANDRAS and COASTAL DUST CONTROL, INC., *doing business as Sanico, LLC*	§	**PLAINTIFFS**
v.	§	**Civil No. 1:24cv5-HSO-RPM**
STATE FARM FIRE AND CASUALTY COMPANY	§	**DEFENDANT**

MEMORANDUM OPINION AND ORDER DENYING PLAINTIFF COASTAL DUST CONTROL, INC.'S MOTION [45] FOR PARTIAL SUMMARY JUDGMENT AND GRANTING IN PART AND DENYING IN PART DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S MOTION [47] FOR SUMMARY JUDGMENT

After a fire at Plaintiffs Johnny Sandras ("Sandras") and Coastal Dust Control, Inc., doing business as Sanico, LLC's ("Sanico"), commercial facilities services business, this insurance coverage dispute under two separate insurance policies arose between the insureds and Defendant State Farm Fire and Casualty Company ("State Farm" or "Defendant"). Sanico has filed a Motion [45] for Partial Summary Judgment, and State Farm responded with its own Motion [47] for Summary Judgment. The issues have been narrowed to two: (1) whether State Farm owes any additional contractual benefits under the Loss of Income and Extra Expense coverage afforded under a policy issued to Sanico; and (2) whether Plaintiffs' extracontractual damages and bad faith claims regarding delay in payment of (a) Coverage B contents coverage and (b) Loss of Income and Extra

Expense coverage under Sanico's policy should be dismissed. *See* Mot. [45]; Mem. [46]; Mot. [47]; Mem. [51]; Mem. [56].[1]

This Court finds that Sanico's Motion [45] for Partial Summary Judgment should be denied and that State Farm's Motion [47] for Summary Judgment should be granted in part and denied in part. Sanico's claims for bad faith, gross negligence, and extracontractual damages arising out of the alleged delay in payment for its contents under Coverage B of its policy will proceed. Plaintiffs' remaining claims will be dismissed.

I. BACKGROUND

A. Factual Background

State Farm issued two insurance policies to Plaintiffs. *See* Compl. [1]. The first was a policy for businessowner's property coverage (the "Property Policy") issued to Plaintiff Johnny Sandras ("Sandras"), *see* Ex. A [5-1], and the second was for dry cleaning and laundering services coverage (the "Business Policy") issued to Sanico, which was also owned by Sandras, *see* Ex. B [5-2]; *see also* Sandra Decl. [45-3] at 1. Sanico is an industrial cleaning business that services and launders commercial items, such as linens and floor mats. *See, e.g.,* Ex. [45-1] at 1; Ex. [45-6] at 155; Ex. [45-9] at 4.

[1] State Farm seeks summary judgment on all claims against it. *See* Mot. [47]. In their briefs, Plaintiffs do not defend, and thus have abandoned, any claims that were brought by Sandras, and those claims are due to be dismissed. *See* Mot. [45]; Mem. [46]; Mot. [47]; Mem. [51]; Mem. [56]. Plaintiffs only dispute claims brought by Sanico for its contract claim related to Loss of Income and Extra Expense, and its extracontractual damages and bad faith claims regarding delay in payment of Coverage B contents and Loss of Income and Extra Expense. *See* Mot. [45]; Mem. [46]; Mem. [56]. All of Sanico's other claims should therefore be dismissed.

Sanico leased from Sandras a building located in Long Beach, Mississippi (the "Long Beach Property"), which was itself an insured property under Sandras' Property Policy. *See* Compl. [1]; Sandra Decl. [45-3] at 1; Ex. A [5-1] at 3. The Property Policy carried a coverage limit for the building of $1,164,600.00, with a basic deductible of $2,500.00. Ex. A [5-1] at 3. The Property Policy further stated that, under certain circumstances, State Farm would "pay up to an additional $10,000 for debris removal expense, for each described premises, in any one occurrence of accidental direct physical loss to Covered Property." *Id.* at 23.

Sanico's Business Policy carried a business personal property limit of $632,400.00, with a $5,000.00 basic deductible. Ex. B [5-2] at 2. It also included "Loss of Income and Extra Expense" coverage for "Actual Loss Sustained – 12 Months." *Id.* at 4. The "Loss of Income and Extra Expense" endorsement in Sanico's Business Policy provided in relevant part as follows:

> **2. Extra Expense**
>
> **a.** We will pay necessary "Extra Expense" you incur during the "period of restoration" that you would not have incurred if there had been no accidental direct physical loss to property at the described premises. The loss must be caused by a Covered Cause Of Loss.
>
> * * *
>
> **b.** We will only pay for "Extra Expense" that occurs after the date of accidental direct physical loss and within the number of consecutive months for Loss Of Income And Extra Expense shown in the Declarations.

Id. at 60. The Business Policy defined "Extra Expense" as follows:

> **1.** "Extra Expense" means expense incurred:
>
> **a.** To avoid or minimize the "suspension" of business and to continue "operations":
>
> **(1)** At the described premises; or

> **(2)** At replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary locations;
>
> **b.** To minimize the "suspension" of business if you cannot continue "operations"; or
>
> **c.** To:
>
> **(1)** Repair or replace any property; or
>
> **(2)** Research, replace or restore the lost information on damaged "valuable papers and records"
>
> to the extent it reduces the amount of loss that otherwise would have been payable under this coverage or "Loss Of Income" coverage.

Id. at 62.

On March 13, 2023, a fire destroyed the building at the Long Beach Property along with its machinery and contents, which prevented Sanico from conducting "any further business or operations at the property." Sandra Decl. [45-3] at 2. The following day, Sandras and Sanico made claims to State Farm under the Policies (the "Claims"). *See* Ex. [45-6] at 3, 30, 63-65 (the "Sanico Business Claim" number 24-46T1-95H on Policy 99-BW-G458-2); Ex. [47-4] at 1, 21 (the "Sandras Property Claim" number 24-46T1-82K on Policy 99-BV-M021-1). The same day, Plaintiffs' insurance agent sent State Farm pictures of the building and informed it that "roof has collapsed in and FD told them it was a total loss." Ex. [45-6] at 60. Also that same day, State Farm noted that contents "[a]ll appear to be a total loss – 6 Commercial washers, dryers, sleds, etc." *Id.* at 59.

By January 12, 2024, State Farm had paid on the Sandras Property Claim the building limit of liability of $1,22,324.00, the debris removal limit of $10,000.00, and loss of rent (through January 2024) of $26,950.72. *See* Ex. [47-11] at 1-2; Ex. [47-14] at 1-2. On the Sanico Business Claim, as of February 17, 2025, State Farm

had paid the contents limit of $667,182.00, the computer property limit of $25,000.00, loss of income through August 2023 of $906,941.00, and the business property of others limit of $50,000.00. *See* Ex. [47-24] at 1; State Farm Rule 30(b)(6) Dep. [47-12] at 60.

A dispute arose concerning the "Loss of Income and Extra Expense" coverage under the Sanico Business Policy. *See* Ex. [47-26] at 1. According to Sandras, "[i]n order that Sanico could continue earning revenue, stay in business, and not lose its clients, Sanico trucked the linens and mats to a facility that is owned and operated by a related entity located in Cottondale, Alabama (Sanico Clanton, LLC), which laundered the products." Sandra Decl. [45-3] at 2. After the items were laundered, they were trucked back to the Mississippi Gulf Coast for Sanico to supply its customers. Sandras claims that Sanico incurred several types of costs in order to continue processing its Mississippi clients' needs in Alabama: "a forklift lease; supplies to replace items that were destroyed in the fire; processing costs paid to Sanico Clanton, LLC to process the cleaning of the products; cost to rent trucks to truck the products to and from Cottondale"; fuel for those trucks; and "the cost to replace products destroyed in the fire, including mats and linens." *Id.* According to Sandras, Sanico incurred these expenses until the bulk of its assets were sold to Cintas on August 25, 2023. *See* Sandras Dep. [47-3] at 54, 71, 126.

Sanico also submitted an "extensive list of items" for recovery of contents under Coverage B of the Business Policy. Ex. [45-6] at 40. It included "$216,718.27 RCV in unattached contents & $1,978,160.65 RCV in attached equipment contents

owned by [Sanico]," *id.*, when limits were $632,400.00, *see id.* at 47. On March 16, 2023, State Farm noted "all contents are obvious total loss." *Id.* at 58. On May 17, 2023, State Farm "explained contents had been received," but the assigned State Farm employee "had not had an opportunity to go through it all yet." *Id.* at 47; *see also id.* at 42 (June 15, 2023, claims note stating that inventory lists were "received in documents" on May 9 and June 1, 2023).

On July 7, State Farm employee Paul Cummins ("Cummins") remarked that "[d]ocumentation has been received showing the equipment was purchased and owned by [Sanico]," and that "[r]eceipts for the large commercial equipment total $807,545.40 RCV," with "[t]otal amount of contents within the structure" being $2,362,419.43 RCV. Ex. [48-9] at 2. State Farm noted that the public adjuster had applied 15% depreciation, but even if State Farm applied "30% depreciation the amount is $1,653,693.601 [sic] which is still more than twice the policy limits," meaning Sanico "has clearly sustained a contents loss in excess of [its] policy limits." *Id.* Payment of the contents limit was eventually made on August 9, 2023. *See* Ex. [45-6] at 34-35.

B. Procedural History

When State Farm did not pay as quickly, or as much, as Sandras and Sanico desired, they filed a Complaint [1] in this Court, invoking its diversity jurisdiction under 28 U.S.C. § 1332. *See* Compl. [1] at 1-3. Plaintiffs contend that, through their mitigation efforts of trucking items requiring cleaning to and from Alabama, Sanico incurred Extra Expenses covered by the Business Policy for which State

Farm has yet to reimburse them. *See id.* at 4. Despite providing detailed spreadsheets and invoices showing profits, losses, and Extra Expenses incurred, "necessary Extra Expenses incurred were not timely paid by State Farm" and were only partially paid. *Id.* "All profits made were expended on these necessary, covered Extra Expenses, therefore causing the business to lose all of its income." *Id.* Additionally, Plaintiffs assert that State Farm "caused unreasonable delay on the processing of the subject claims when it repetitively asked the same questions after they were, multiple times, answered." *Id.* at 8. According to the Complaint [1], "State Farm failed to tender payment for covered losses within thirty (30) days of receiving proof of loss." *Id.* at 9. The Complaint [1] advances claims against State Farm for negligence, breach of contract, and bad faith, and seeks actual, extracontractual, and punitive damages. *Id.* at 15-17.

Sanico and State Farm have now filed competing Motions [45], [47] for Summary Judgment. Sanico's offensive Motion [45] for Partial Summary Judgment seeks a determination that State Farm improperly calculated the benefits due it under the "Loss of Income and Extra Expense" endorsement. Mot. [45] at 1. It seeks a judgment that "it is entitled to policy benefits under the endorsement for both its loss of business income and its extra expenses" and that State Farm "is not entitled to reduce its payment of extra expenses to the extent that those extra expenses reduce the loss of business income." *Id.*

State Farm's Motion [47] for Summary Judgment asks that, because it "has paid all amounts owed under the policies," judgment be entered in its favor on

Sandras' and Sanico's contract claims. Mot. [47] at 1. Alternatively, State Farm asks the Court to grant partial summary judgment on Plaintiffs' claims seeking extracontractual and punitive damages, arguing that "[t]he evidence demonstrates that State Farm performed a reasonable investigation and made reasonable (and correct) claim decisions." *Id.* at 2.

Plaintiffs' briefing on the Motions [45], [47] establishes that they are only pursuing Sanico's contract claim related to Loss of Income and Extra Expense and its extracontractual damages and bad faith claims regarding delay in payment of Coverage B contents and Loss of Income and Extra Expense under the Business Policy. *See, e.g.*, Mot. [45]; Mem. [46]; Mem. [56]. The Court therefore need only address these remaining claims.

II. DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate "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." Fed. R. Civ. P. 56(a). The movant must "identify 'those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrates the absence of a genuine issue of material fact.'" *Pioneer Expl., L.L.C. v. Steadfast Ins. Co.*, 767 F.3d 503, 511 (5th Cir. 2014) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). If the movant carries its initial burden, "the nonmovant must go beyond the pleadings and designate specific facts showing that there is a genuine issue for

trial." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). A court views all evidence in the light most favorable to the nonmovant and draws all reasonable inferences in his favor. *Id.* But if the nonmovant cites evidence that "is merely colorable, or is not significantly probative," summary judgment may be granted. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986) (citations omitted).

Where a party bears the burden of proof at trial on a claim or defense and seeks an offensive summary judgment, its "burden is even higher." *Guzman v. Allstate Assurance Co.*, 18 F.4th 157, 160 (5th Cir. 2021). In such a case, the moving party "must 'establish beyond peradventure *all* of the essential elements of the claim or defense.'" *Id.* (emphasis in original) (quoting *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986)). "Only if the movant succeeds must the nonmovant designate specific facts showing that there is a genuine issue for trial." *Id.* (quotations omitted).

Because the Court's jurisdiction in this case is premised upon diversity of citizenship, *see* Compl. [1], it applies state substantive law, *see Krieser v. Hobbs*, 166 F.3d 736, 739 (5th Cir. 1999). The parties agree that Mississippi law governs this dispute. *See, e.g.,* Mem. [46] at 9-10; Mem. [51] at 16-17.

B. Sanico's Breach of Contract Claims

Sanico seeks partial summary judgment concerning the interpretation of the "Loss of Income and Extra Expense" endorsement, *see* Mot. [45] at 1; Mem. [46] at 18, while State Farm seeks summary judgment on all breach of contract claims

raised in the Complaint [1] because it maintains that it has paid all amounts due under both Policies, *see* Mot. [47] at 1; Mem. [51] at 42. According to Plaintiffs, the only item that remains for payment "is under the Loss of Income and Extra Expense coverage afforded by the policy issued to Sanico." Mem. [56] at 15. Resolution of both Sanico's and State Farm's Motions [45], [47] turns upon whether Sanico is entitled to any additional recovery under that endorsement. *See id.*; Mot. [47].

1. Relevant Legal Authority

In Mississippi, "interpretation of an insurance policy is a question of law." *VT Halter Marine, Inc. v. Certain Underwriters of Lloyd's of London Subscribing to Pol'y No. B0507M17PH04660*, 386 So. 3d 722, 724 (Miss. 2024) (quotation omitted). "[I]nsurance policies are contracts, and as such, they are to be enforced according to their provisions." *Corban v. United Servs. Auto. Ass'n.*, 20 So. 3d 601, 609 (Miss. 2009) (quotation omitted). If the language of a policy is clear and unambiguous, "then the language of the policy must be interpreted as written." *Hayne v. The Doctors Co.*, 145 So. 3d 1175, 1180 (Miss. 2014); *see also VT Halter Marine, Inc.*, 386 So. 3d at 724 ("[W]hen the policy terms are plain and unambiguous, this Court uses their plain and ordinary meaning and applies the terms as written.").

Any ambiguity in an insurance policy is "strictly construed against the insurer." *Williams v. Mississippi Farm Bureau Cas. Ins. Co.*, 406 So. 3d 758, 761 (Miss. 2025). And "provisions that exclude coverage are construed liberally in favor of the insured." *VT Halter Marine, Inc.*, 386 So. 3d at 724. But "a court must refrain from altering or changing a policy where terms are unambiguous, despite

resulting hardship on the insured." *Williams*, 406 So. 3d at 761 (quotations omitted).

2. The Business Policy

The Loss of Income and Extra Expense endorsement provides in relevant part as follows:

> **1. Loss Of Income**
> **a.** We will pay for the actual "Loss Of Income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by accidental direct physical loss to property at the described premises. The loss must be caused by a Covered Cause Of Loss.
> * * *
> **b.** We will only pay for "Loss Of Income" that you sustain during the "period of restoration" that occurs after the date of accidental direct physical loss and within the number of consecutive months for Loss Of Income And Extra Expense shown in the Declarations. We will only pay for "ordinary payroll expenses" for 90 days following the date of accidental direct physical loss.
> **2. Extra Expense**
> **a.** We will pay necessary "Extra Expense" you incur during the "period of restoration" that you would not have incurred if there had been no accidental direct physical loss to property at the described premises. The loss must be caused by a Covered Cause Of Loss.
> * * *
> **b.** We will only pay for "Extra Expense" that occurs after the date of accidental direct physical loss and within the number of consecutive months for Loss Of Income And Extra Expense shown in the Declarations.

Ex. B [5-2] at 60. The Business Policy defines "Extra Expense" as follows:

> **1.** "Extra Expense" means expense incurred:
> **a.** To avoid or minimize the "suspension" of business and to continue "operations":
> **(1)** At the described premises; or

> **(2)** At replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary locations;
>
> **b.** To minimize the "suspension" of business if you cannot continue "operations"; or
>
> **c.** To:
> **(1)** Repair or replace any property; or
> **(2)** Research, replace or restore the lost information on damaged "valuable papers and records"
>
> to the extent it reduces the amount of loss that otherwise would have been payable under this coverage or "Loss Of Income" coverage.

Id. at 62.

3. Analysis

The parties do not dispute that Sanico incurred some "Extra Expense" to avoid or minimize suspension of its business or to continue operations by relocating to Alabama. The question is the application of the "to the extent" phrase at the end of the definition of "Extra Expense" and how it impacts Sanico's recovery under the Business Policy. The dispute centers on the meaning of the unindented text at the end of the definition of "Extra Expense," which follows indented subparts (a)-(c). *See id.* The parties contest whether that unindented portion reduces the amount of loss or "Loss of Income" coverage for each of preceding indented subparts (a), (b), and (c), or only for subpart (c). *See id.*

The plain language of the Business Policy indicates that there are essentially three disjunctive definitions of "Extra Expense" separated by "or," with one of those definitions in subpart (a) being relevant here. Ex. B [5-2] at 62; *see* Mem. [46] at 12. State Farm contends that, reading the definition in subpart (a) with the unindented

text below it, this provision defines "Extra Expense" as expense incurred to avoid or minimize the "suspension" of business or to continue "operations" either (1) at the described premises or (2) at a replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary location, to the extent it reduces the amount of loss that otherwise would have been payable under this coverage or "Loss Of Income" coverage. Ex. B [5-2] at 62.[2] Plaintiffs argue that the unindented text modifies only the subpart immediately preceding it, subpart (c), which means that State Farm could not reduce payments under subparts (a) and (b). *See* Mem. [46] at 12-13.

In confronting similar unindented text in statutes, the First Circuit has considered statutory structure and found that, when there are indented and lettered subparts followed by unlettered and unindented text in an adverbial phrase, the format sets the lettered subparts apart from the unindented adverbial phrase, such that the final unindented phrase describes the initial phrase. *See Castaneda v. Souza*, 810 F.3d 15, 47 (1st Cir. 2015). Under this interpretation, the prepositional adverbial phrase "to the extent" would be set apart from subparts (a)-(c) of the Policy and would limit the definition of "Extra Expenses" to "expense incurred," meaning it covers "expense incurred," but only "to the extent it reduces the amount of loss that otherwise would have been payable under this coverage or 'Loss Of Income' coverage." Ex. B [5-2] at 62; *see Castaneda*, 810 F.3d at 47; *see*

[2] "State Farm seeks a declaration that the 'to the extent' qualifier in the 'Extra Expense definition" applies to each of the subparts, Mem. [51] at 16, but it has not filed any counterclaim, nor is this a declaratory judgment action. The Court therefore declines to afford declaratory relief.

also, e.g., Frillz, Inc. v. Lader, 104 F.3d 515, 517 (1st Cir. 1997) (interpreting a different statute and noting that "the final sentence of section 636(a)(6) appeared as it does now: below the three subsections, unindented," meaning it was not part of subsection (C)); *Miller v. Safeco Title Ins. Co.*, 758 F.2d 364, 368 (9th Cir. 1985) ("A careful draftsman who intended to limit the interest under both subparagraph 1(A) and subparagraph 1(B) would have included the limitation in both subparagraphs or in an unindented paragraph either preceding or following the two subparagraphs.").

And as Justice Antonin Scalia and Bryan A. Garner have explained under the "Scope-of-Subparts Canon," material contained in unindented text relates to all the preceding indented subparts, unless the circumstances in which the text was created suggest its formatting "was not something that the drafters of the text enacted." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts (2012) at 156 ("Reading Law"). Based upon the plain language of the Business Policy here, it appears that the drafter, State Farm, acted intentionally in its formatting, *see* Ex. B [5-2], meaning the unindented text in the "Extra Expense" definition relates to each of its preceding indented subparts, *see* Reading Law at 156; *Castaneda*, 810 F.3d at 47; *Frillz, Inc.*, 104 F.3d at 517. The Court agrees with State Farm's interpretation of the Business Policy in this regard.

Sanico claims "Extra Expense" through August 25, 2023, when it sold the business. *See* Sandras Dep. [47-3] at 54-55, 126. State Farm retained forensic accountant Christopher Dailey ("Dailey"), who authored an expert report [49-11]

relating to the fire damage. *See* Ex. [49-11] at 1.[3] Dailey "calculate[d] the potential business income loss Sanico would have sustained had it shutdown [sic] following the loss" and compared it to projected revenue, expenses, and net income for the business for the same period assuming the fire event did not occur. *Id.* at 2. Dailey opined that, from March 13 to August 25, 2023, business income loss mitigated was $884,428.00, but Sanico incurred net extra expenses totaling $1,467,371.00 during that period to continue operations at a different location. *Id.* at 2-3. Because this amount exceeded the loss mitigated, the extra expense recoverable was only $884,428.00, the amount of business income loss mitigated. *Id.* at 3.

As of February 17, 2025, State Farm had paid "Loss of Income through 8/31/2023" of $906,941.00 on the Sanico Business Claim. Ex. [47-24] at 1. State Farm states in its brief that this was paid "under the Extra Expense coverage, which represents [Sanico's] loss mitigated through August 31, 2023," which it claims was an overpayment, "as ending the calculation on August 25, 2023, which is when Sandras sold the business, results in a loss mitigated of $884,428.00." Mem. [51] at 22. Therefore, State Farm insists that it has already paid more on this claim than it owed. *See id.*

[3] Plaintiffs object to much of State Farm's evidence, including Dailey's Report [49-11], arguing it is inadmissible. But the question is not whether the evidence as presented is admissible, but whether "the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2); *see also, e.g., Poincon v. Offshore Marine Contractors, Inc.*, 9 F.4th 289, 299 (5th Cir. 2021) (noting that a party who submitted a proposed expert's unsworn report "did not need to produce an admissible form of the expert's testimony to overcome summary judgment," as "[i]t is enough that the evidence can be made admissible for trial").

Plaintiffs attempt to rebut State Farm's arguments by reference to caselaw which considered other policies containing different contract language. *See* Mem. [46] at 11-17; Mem. [56] at 15-16; Reply [59] at 3-5. The Court has already rejected Plaintiffs' interpretation of the Business Policy, and the caselaw it cites resolving coverages under different policies is not persuasive. What is left is a pure question of numbers under the Business Policy—what was the mitigation Extra Expense incurred by Sanico "to the extent it reduces the amount of loss that otherwise would have been payable under this coverage or 'Loss Of Income' coverage"? Ex. B [5-2] at 62.

Under a plain reading of the Business Policy, there could be an increase for Extra Expense coverage if Sanico presented competent evidence that: (1) its Loss of Income sustained by a complete shutdown was higher than the number provided by State Farm, and (2) Sanico incurred Extra Expense to the extent of that higher number to mitigate Loss of Income. *See id.* But Plaintiffs do not cite any competent summary judgment evidence tending to show that Sanico would have sustained a greater Loss of Income under a full shutdown than the number Dailey has presented. *See* Ex. [49-11] at 2-3; Mem. [46]; Mem. [56]; Reply [59]. This is insufficient to show beyond peradventure that Sanico is entitled to additional recovery under the Extra Expense endorsement of the Business Policy, and Plaintiff's offensive Motion [45] for Partial Summary Judgment should be denied. *See Guzman*, 18 F.4th at 160.

Based upon the record, including a plain reading of the Business Policy [5-2] and Dailey's report, *see* Ex. [49-11] at 2-3, State Farm has carried its burden of demonstrating the absence of a genuine issue of material fact on this question of contract interpretation, *see Pioneer Expl., L.L.C.*, 767 F.3d at 511, and Plaintiffs have not designated specific facts showing that there is a genuine issue for trial on this claim, *see Little*, 37 F.3d at 1075. State Farm's Motion [47] should be granted as to the remaining contract claim. *See id.*

C. Bad Faith and Gross Negligence Claims

1. Relevant Legal Authority

"When an insured makes a claim against his policy, the insurer must perform a 'prompt and adequate investigation and make a reasonable, good faith decision based on that investigation.'" *United Servs. Auto. Ass. v. Estate of Sylvia F. Minor*, No. 2023-CA-49-SCT, 2024 WL 4985302, at *6 (Miss. Dec. 5, 2024) (quoting *Hoover v. United Servs. Auto Ass'n*, 125 So. 3d 636, 642 (Miss. 2013)). To prevail on a claim for bad faith, "a plaintiff carries the 'heavy burden' to prove that his insurer lacked any arguable basis for its decision." *Estate of Sylvia F. Minor*, 2024 WL 4985302, at *6 (quoting *United Servs. Auto. Ass'n v. Lisanby*, 47 So. 3d 1172, 1178 (Miss. 2010)). Stated differently, a plaintiff must "prove by clear and convincing evidence that the defendant 'acted with actual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, or committed actual fraud.'" *Id.* (quoting Miss. Code Ann. § 11-1-65(1)(a)).

"The Mississippi Supreme Court has recognized that claimants can bring bad faith claims against and recover punitive damages from insurers who refuse to pay out on a valid claim." *James v. State Farm Mut. Auto. Ins. Co.*, 743 F.3d 65, 69 (5th Cir. 2014) (applying Mississippi law). Mississippi courts have also "permitted claimants to recover damages on bad faith claims when resolution of an insurance claim is merely delayed rather than ultimately denied." *Id.* To establish a bad faith delay claim, a plaintiff must prove that: (1) the insurer was contractually obligated to pay the claim; (2) it "lacked an arguable or legitimate basis for its delay in paying" the claim; and (3) the delay "resulted from an intentional wrong, insult, or abuse as well as from such gross negligence as constitutes an intentional tort." *Id.* at 70.

But "[n]ot all delays in the payment of claims are actionable." *Pilate v. Am. Federated Ins. Co.*, 865 So. 2d 387, 394 (Miss. Ct. App. 2004).

> Obviously, some delay in evaluating claims is inevitable, legitimate and socially useful. Insurers are entitled, and in fact legally obligated, to investigate fully the legitimacy of claims, and some skepticism in evaluating claims is appropriate. Since an insurer has an obligation under Mississippi law to investigate claims, discharging that duty is not bad faith. However, an inadequate investigation of a claim may create a jury question on the issue of bad faith.

Id. (quoting Jeffrey Jackson, Mississippi Insurance Law § 12:5 (2001)). The question is whether the insurer's explanation for its investigation is sufficient to determine that its conduct did not rise to the level of gross negligence or an independent tort. *See id.* at 400-01.

Finally, even where punitive damages are not warranted, the insurer may still be liable for an intermediate form of relief, extracontractual damages, which "are intended to cover reasonably foreseeable costs and expenses, such as attorney's fees." *Fulton v. Mississippi Farm Bureau Cas. Ins. Co.*, 105 So. 3d 284, 289 (Miss. 2012). But extracontractual damages are not warranted where the insurer can demonstrate "an arguable, good-faith basis" for its actions. *Lisanby*, 47 So. 3d at 1178.

2. Analysis

Plaintiffs' bad faith claims are premised upon State Farm's asserted delay in payment of the contents coverage under Coverage B (personal property) and the Loss of Income and Extra Expense under Sanico's Business Policy. *See* Mem. [56] at 5-6, 17; Compl. [1] at 2, 5, 11, 14, 17-18. State Farm does not contest that Sanico and Sandras were entitled to contract benefits, as it has made significant payments to both under the Building and Business Policies. The pertinent questions are whether Plaintiffs have presented evidence creating a triable issue that State Farm "lacked an arguable or legitimate basis for its delay in paying" the Coverage B and Loss of Income and Extra Expense claims, and whether any undue delay "resulted from an intentional wrong, insult, or abuse as well as from such gross negligence as constitutes an intentional tort." *James*, 743 F.3d at 69. In resolving this question, the Court considers the timeline for each claim separately, based upon the record as a whole, including State Farm's relevant claims notes, which are attached as Exbibit "C" [45-6] to Sanico's Motion [45] for Partial Summary Judgment.

The Court first notes that State Farm's investigation and payment for contents under Coverage B and for Loss of Income and Extra Expense can be addressed separately because the Business Policy is divisible. *See, e.g., Travelers Indem. Co. v. Wetherbee*, 368 So. 2d 829, 835 (Miss. 1979) (noting that the Mississippi Supreme Court has "held an insurance policy covering a dwelling and its contents was divisible and enforceable to the dwelling although the coverage for the contents was denied because the insured had misrepresented the value of the contents" and that such divisible coverages "may be considered as separate contracts even though the premiums are paid in the entirety," meaning that "an insurer may be liable for punitive damages on one contract even though other contractual payments are delayed because of legitimate dispute").

In this case, the fire occurred on March 13, 2023; State Farm was notified of Sanico's claim on the Business Policy the next day. *See* Ex. [45-6] at 60. By March 16, State Farm had begun its investigation and referred to the business and contents as a total loss, and by April 14, 2023, the cause of the fire was determined to be accidental. *See id.* at 53, 57-60; *see also, e.g., id.* at 57 (stating on March 21 that "this is a total loss"); *id.* at 58 (reporting on March 16 that "all contents are obvious total loss"); *id.* (stating on March 14 that "[i]t is not a CAT claim, but it is a total loss claim and thought it best to be handled by LOI team").

With respect to the Loss of Income and Extra Expense claim, State Farm tendered a $50,000.00 advance on April 28, 2023, about two weeks after the cause of loss was determined to be accidental, while requesting additional information to

continue its investigation. *See id.* at 51. On May 19, 2023, State Farm paid, in addition to the advance, $217,253.08 for loss of income through April 2023. *See id.* at 45-46. State Farm also retained a forensic accounting firm to ensure the amounts owed were correct. *Id.* at 49. After that time, most of State Farm and Sanico's disputes centered around the interpretation of the Policy contract, which the Court has now resolved in State Farm's favor.

On June 19, 2023, a State Farm agent recognized that loss of income projected through June 10, 2023, which was the first 90 days after the loss, was $495,204.23, with $267,253.08 having already been paid. *See id.* at 40. And on June 26, State Farm issued an additional payment for Loss of Income through June 10 in the amount of $227,951.15. *See id.* at 39. On September 21, 2023, State Farm received the forensic accountant's preliminary analysis of Loss of Income through August 2023, which calculated the loss of income at $906,941.00. *See id.* at 32. Less than a week later, on September 27, 2023, State Farm made an additional payment for Loss of Income from June 10 through August 31 in the amount of $411,736.77, bringing the total paid on this claim to the $906,941.00 sum calculated by the forensic accountant. *See id.* Sanico then retained counsel, and on January 15, 2024, State Farm learned that Sanico was ceasing business operations and was not claiming Loss of Income after November 30. *See id.* at 30. A note in State Farm's claims file dated February 2, 2024, indicated that it would work with the forensic accountant and Sanico's attorney regarding any additional Loss of Income that may be owed. *See id.*

Viewing the record as a whole, it is evident that State Farm was continuing its investigation on the Loss of Income and Extra Expense claim, while simultaneously making payments on this claim over time as the investigation progressed. Plaintiff has not presented sufficient evidence that State Farm lacked an arguable or legitimate basis for any delay in paying this claim, or that any delay "resulted from an intentional wrong, insult, or abuse as well as from such gross negligence as constitutes an intentional tort." *James*, 743 F.3d at 70. While there were some delays, "[n]ot all delays in the payment of claims are actionable." *Pilate*, 865 So. 2d at 394 (quotation omitted). State Farm was "entitled, and in fact legally obligated, to investigate fully the legitimacy of claims," and its "discharging that duty is not bad faith." *Id.* (quotation omitted). The record reflects that is all that occurred here with respect to the Loss of Income and Extra Expense claim.

Construing the evidence in Plaintiffs' favor, no reasonable juror could conclude that State Farm's conduct rose to the level of gross negligence or an independent tort, and any bad faith claim related to the Loss of Income and Extra Expense claim should be dismissed. *See id.* at 400-01. And because State Farm has demonstrated an arguable, good-faith basis for its actions, extracontractual damages are likewise not appropriate. *See Lisanby*, 47 So. 3d at 1178.[4]

[4] The Complaint [1] contends that Mississippi Code § 83-9-5(1)(h) "requires benefits to be paid by an Insurer within 25 days of electronically receiving proof of loss," which State Farm purportedly failed to do. Compl. [1] at 8 (citing Miss. Code Ann. 83-9-5(1)(h)). But Plaintiffs do not argue in their briefs that this statute applies, *see* Mem. [56]; Reply [59], nor have they submitted evidence that the Business Policy covered any loss that would make the statute applicable, *see* Miss. Code Ann. § 83-9-5(1) ("As used in this section, the term 'insurer' means a health maintenance organization, an insurance company or any other entity responsible for the payment of benefits under a policy or contract of accident

But the Court finds that a genuine dispute of material fact remains as to the delay claim for Coverage B contents. Within 24 hours of the fire, on March 14, 2023, State Farm acknowledged that the contents "[a]ll appear to be total loss – 6 Commercial washers, dryers, sleds etc.," Ex. [45-6] at 59, and by April 14, 2023, the cause of the fire was determined to be accidental, *see id.* at 53. On May 17, State Farm noted that Sanico's public adjuster had submitted April expenses that fell under Coverage B, including expenses for storage in the amount of $2,227.59 and for supplies of $46,390.52, *see id.* at 47, and State Farm's June 12 notes indicate that "[i]nventory received in documents: 5/9 & 6/1/23," *id.* at 42. By June 19, the public adjuster had "listed $216,718.27 RCV in unattached contents & $1,978,160.65 RCV in attached equipment contents," and State Farm noted that the limit was $632,400.00. *Id.* at 40. But as of that date, over three months after the claim was made and more than two months after the cause was determined to be accidental, no contents payments had been made. *See id.* at 40, 53.

On June 20, the public adjuster inquired about contents coverage and the documents he had submitted and explained that Sanico "wants to order equipment and can't until we pay for damaged items." *Id.* at 39. State Farm responded that it "would handle as quickly as possible." *Id.* As of July 6, "contents had been sent for processing but [State Farm] had no way of knowing status at [that] time," although Plaintiffs' insurance agent had explained that Sandras "is very anxious because a

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and sickness insurance . . . ."); *see also, e.g., Cox McCarver, LLC v. Sentry Ins. Grp., Inc.*, No. 3:19-CV-862-CWR-LGI, 2021 WL 1187086, at *2 (S.D. Miss. Mar. 29, 2021) ("The Policy at issue today is a commercial insurance policy providing coverage to commercial property, as well as providing liability insurance . . . . Thus, § 83-9-5 does not apply to the Policy.").

lot of that equipment has to be ordered months in advance and without it he will not be able to open back up even if the structure is ready." *Id.* at 38.

On July 7, State Farm remarked that "[d]ocumentation has been received showing the equipment was purchased and owned by [Sanico]," and that "[r]eceipts for the large commercial equipment total $807,545.40 RCV," with "[t]otal amount of contents within the structure" being $2,362,419.43 RCV. Ex. [48-9] at 2. State Farm noted that the public adjuster had applied 15% depreciation, but even if State Farm applied "30% depreciation the amount is $1,653,693.601 [sic] which is still more than twice the policy limits," meaning Sanico "has clearly sustained a contents loss in excess of [its] policy limits." *Id.* A State Farm employee therefore requested authority to proceed with payment of policy limits of Coverage B at that time. *See id.*

According to State Farm's claims notes from a week later, as of July 14, over four months after the initial claim and three months after determination of the cause of the fire, State Farm's estimated total for contents losses under Coverage B was $177,902.83, less the $5,000.00 deductible, which meant $172,902.83 was due to Sanico. *See* Ex. [45-6] at 36. But State Farm had not tendered any funds at all by that time, and no payment was made on Sanico's Coverage B claim until nearly a month later, on August 9, 2023, when State Farm tendered to Sanico its Coverage B limits, a total of $667,182.00. *See id.* at 35, 141. This was nearly five months after the March 13 fire and four months after its cause was determined. *See id.* at 35, 59, 141; *see also* State Farm 30(b)(6) Dep. [45-10] at 29 (answering "[y]es" when asked if

he was "aware that the contents claim wasn't paid until about seven months after the loss"). On this record, Sanico has presented evidence creating a triable fact question for a jury on whether State Farm "lacked an arguable or legitimate basis for its delay in paying" the claim, and whether the delay resulted from gross negligence. *James*, 743 F.3d at 70.

State Farm complains that on March 14, 2023, it sent Sandras its "XactContents Collaboration online application, which is used to collect and analyze personal property claims," but on or about May 15, the public adjuster "submitted an extensive personal property inventory in a different format," which required some investigation. Mem. [51] at 8; *but see, e.g.,* Ex. [45-6] at 36 (on July 14, 2023, "CO stated claim is way over limits and management is aware. CO stated as long as all inventory is in the system, they can work with that. Informed CO all inventory is in XC and items will be pended for CO review on large dollar items."). But State Farm has not adequately addressed the reasonableness of not paying *any* funds towards Coverage B contents until limits were paid on August 9, even though by March 16, State Farm's claims notes acknowledge that "all contents are obvious total loss." Ex. [45-6] at 58. And on May 17, State Farm had noted that expenses of $2,227.59 for storage and $46,390.52 for supplies fell under Coverage B, *see id.* at 47, and by at least July 7, State Farm recognized that given the expensive equipment that had been destroyed, Sanico had "clearly sustained a contents loss in excess of [its] policy limits," Ex. [48-9] at 2; *see also* Ex. [45-6] at 39 (stating in

claims notes on June 26 that "PA advised PH has more than exceeded his BPP [likely business personal property] limits in this loss").

The Court further notes the disparity between State Farm's claims notes reflecting how the Coverage B claim was handled and those reflecting how the Loss of Income and Extra Expense claim was addressed. From the record before the Court, there appear to be relatively large gaps in time where no action occurred or the Coverage B was not being actively investigated or adjusted by State Farm. On March 14 and 16, 2023, State Farm acknowledged contents were a total loss, *see* Ex. [45-6] at 58-59, and the fire was determined to be a covered accidental event on or about April 14, *see id.* at 53. It was not until nearly a month later, on May 9, that Cummins stated that he would "address the contents." *Id.* at 50. A week later, another employee's claims note directed Cummins to update the file "with pending note and status," but it is not clear whether he did. *Id.* at 48 (May 16, 2023). The next day, another employee questioned whether some of the expenses that had been submitted could be evaluated under Coverage B. *Id.* Cummins then noted on May 17 that he had received a call from the public adjuster while he "was in the field and did not have access to the claim. [Cummins] explained contents had been received but [he] had not had an opportunity to go through it all yet." *Id.* at 47. But Cummins "would review all and get back with him." *Id.* There is no indication of when, if at all, that occurred. *See id.*

On May 19, another State Farm employee noted that "BPP storage and supplies" were not extra expenses "and are part of Cov B," but no additional

information about contents was provided for nearly two more weeks. *Id.* at 45. On May 31, a different State Farm employee stated

> [c]ontents claim was received in docs on May 12. COL 34 currently assigned to Paul Cummins. If Paul is handling COL 34, please proceed with evaluation as soon as possible. PA involved. If COL 34 to be handled by BCFR, please confirm with BCFR TM and reassign COL 34 from Paul to BCFR.

Id. at 44 (emphasis removed). Cummins did not enter another claims note until June 6, when he returned a call from the public adjuster and "[c]onfirmed receipt of the contents docs he had sent." *Id.* at 43. Cummins stated that he "would review further and get back with [him] as necessary." *Id.* It was not until about a week later, on June 12, that Cummins created a task assignment and asked someone else at State Farm to input a portion of Sanico's contents list into the XactContents program. *Id.* at 42. On June 16, someone at State Farm again asked Cummins to "update file with a status and pending note for 34/001." *Id.* at 40. Three days later, on June 19, Cummins stated that the public adjuster "submitted an extensive list of items for contents consideration," which he had assigned to be inputted, which list totaled "$216,718.27 RCV in unattached contents & $1,978,160.65 RCV in attached equipment contents owned by [Sanico]," and noted "[l]imits are $632,400." *Id.*

The next day, June 20, Sanico's insurance agent called Cummins regarding the status of the contents claim. *See id.* at 39. The agent made another inquiry over two weeks later, on July 6, explaining Sanico "is very anxious because alot [sic] of that equipment has to be ordered months in advance." *Id.* at 38. On July 7, a State Farm employee finally manually entered the inventory of contents into a "SF

excel sheet" and "[i]mported inventory to XC (378 items)." *Id.* at 37. On that same day, Cummins noted that Sanico was anxious and requested authority to proceed with paying the policy limits on Coverage B. Ex. [48-9] at 2. But payment of the Coverage B claim was still not authorized until over a month later, on August 8. *See id.* at 35. State Farm has not adequately addressed these various delays and temporal gaps in the adjustment of the contents claim. Moreover, unlike the Loss of Income and Extra Expense claim, no advances of funds were ever made on the Coverage B contents until the limits were paid about five months after the fire, on August 9. *See* Ex. [45-6] at 34-35.

The Court's task at this juncture is not to decide whether State Farm was in fact grossly negligent or acted in bad faith in handling Sanico's Coverage B claim. Instead, the Court must decide whether, viewing the evidence in the light most favorable to Sanico as the nonmovant, a reasonable jury could make such a finding. *See, e.g., Partida Aranda v. YRC Inc.*, Civ. No. 3:18-cv-0494-D, 2019 WL 2357528, at *5 (N.D. Tex. Jun. 4, 2019) ("The court's role in deciding defendants' motion for partial summary judgment is not to resolve the fact question whether [a party's] actions and omissions actually constituted gross negligence. Rather, the court need only decide whether a reasonable jury could make this finding." (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986))). After careful review of the lengthy summary judgment record, the Court finds that a fact question remains as to whether State Farm had an arguable or legitimate basis for its delay in payment of Sanico's contents claim. Put differently, there remains a genuine dispute suitable

for jury resolution on the question of whether State Farm's delay in payment for contents under Coverage B of the Business Policy constituted gross negligence. *See* Miss. Code Ann. § 11-1-65(1)(a). Its Motion [47] for Summary Judgment on the bad faith, negligence, and extracontractual-damages claim should be denied as to Coverage B contents claims.

III. CONCLUSION

To the extent the Court has not addressed any of the parties' remaining arguments, it has considered them and determined that they would not alter the result.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Motion [45] for Partial Summary Judgment filed by Plaintiff Coastal Dust Control, Inc., doing business as Sanico, LLC, is **DENIED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Defendant State Farm Fire and Casualty Company's Motion [47] for Summary Judgment is **DENIED IN PART**, as to Plaintiff Coastal Dust Control, Inc., doing business as Sanico, LLC's claims for bad faith, gross negligence, and extracontractual damages related to alleged delay in payments for contents under Coverage B of Plaintiff Coastal Dust Control, Inc., doing business as Sanico, LLC's Business Policy, and **GRANTED IN PART**, in all other respects. Plaintiff Coastal Dust Control, Inc., doing business as Sanico, LLC's claim for bad faith, gross negligence, and extracontractual damages for delay in payments for contents under Coverage B of its Business Policy remains for trial. All other claims advanced by Plaintiffs

Johnny Sandras and Coastal Dust Control, Inc., doing business as Sanico, LLC, are **DISMISSED WITH PREJUDICE.**

SO ORDERED AND ADJUDGED, this the 5th day of September, 2025.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
CHIEF UNITED STATES DISTRICT JUDGE