IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BILLY REAGINS	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 4:24-cv-01404**
	§	
MERIDIAN SECURITY INSURANCE COMPANY,	§	
	§	
Defendant.	§	

DEFENDANT MERIDIAN SECURITY INSURANCE COMPANY 'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant Meridian Security Insurance Company ("Meridian") files this Motion for Summary Judgment and in support thereof states as follows:

I. STATEMENT OF THE UNDISPUTED FACTS

The Property

1. This case arises out of a first-party insurance dispute between Plaintiff Billy Reagins (Plaintiff) and Defendant Meridian arising out of alleged property damage caused by a March 22, 2022, storm.

2. Meridian issued Policy No. 1001066738 to Billy Reagins ("Reagins") for the policy period beginning February 8, 2022, through February 8, 2023. The policy provided coverage for the Property, subject to all terms, conditions, limitations, and exclusion therein. **Exhibit A.** The property consisted of two buildings, the dwelling itself and a separated garage.

The Claim

1. Plaintiff's claim was reported to Defendant by public adjuster Chris Lackey on July 12, 2022. The notice of loss claimed wind and hail damage to the roof which occurred on or about March 22, 2022. *See* **Exhibit B**. Defendant acknowledged the claim the same day. *See* **Exhibit C**. Also on July 12, 2022, Chris Lackey, a public adjuster emailed Defendant providing a Notice of Representation which was signed by Plaintiff on June 23, 2022. *See* **Exhibit D**.

2. On August 10, 2022, Defendant inspected the property. *See* **Exhibit E**. On August 17, 2022, Chris Lackey sent his estimate totaling the replacement cost value of the roof at $28,150.65. *See* **Exhibit F**. On August 29, 2022, Defendant contacted Lackey to make him aware his estimate was received and asked for Lackey to provide details on Plaintiff's 2017 claim with Allstate. *See* **Exhibit G**. Lackey never provided any information regarding the 2017 claim.

3. On October 21, 2022, Defendant's estimate was completed. Within the estimate itself, Defendant communicated to Plaintiff the cost to repair or replace your damaged property as a result of the above referenced loss is $3,960.94, which is under Plaintiff's deductible. *See* **Exhibit H**. On the same day, Defendant sent its coverage letter to Plaintiff. *See* **Exhibit I**.

4. On November 6, 2022, Plaintiff's counsel provided Defendant with a Formal Notice of Claim and letter of representation. *See* **Exhibit J**. On November 16, 2022, Quantum Claim Consulting Services inspection of the property and provided an estimate in the amount of $102,822.01. *See* **Exhibit K**. Which included line items for the interior and exterior.

5. On December 20, 2022, Defendant responded to the Dick Law Firm's email, requesting a reinspection, and disputing the items contained the Quantum Estimate. *See* **Exhibit L**. Defendant completed its reinspection on February 13, 2023.

6. On March 27, 2023, Defendant emailed Plaintiff's counsel with Defendant's updated coverage letter and statement of loss explaining Defendant's payment of $3,502.57. *See* **Exhibit M**. Despite Defendant's payment, Plaintiff's counsel responded stating they disagree with Defendant's evaluation and provided Plaintiff intends to invoke appraisal. *Id*. Even though Plaintiff expressed his dissatisfaction with Defendant's payment of the claim, Plaintiff never presented Defendant with any type of communication invoking appraisal. Additionally, prior to filing suit Plaintiff failed to provide notice under 542A.003.

7. Furthermore, this is Plaintiff's second lawsuit against Defendant. Plaintiff first lawsuit was filed in March of 2023. That lawsuit also involved a first party property claim arising out of Winter Storm Uri. There, Plaintiff and Defendant proceeded with the appraisal process to which Defendant ultimately paid the appraisal award and all potential statutory interest that could have been owed at that time. That case was disposed of when Defendant prevailed on summary judgment.

8. The appraisal award in the previous lawsuit included damages for the interior of the home including the kitchen, living room, dining room, rear entry, master bedroom, master bath, master closet, stairs, back bed closet, plumbing and right elevation. *See* **Exhibit N**.

9. Coincidentally, the Quantum Claim Consulting estimate provided to Defendant for this claim also included the entry/foyer, master bedroom, bathroom, and another bedroom. *See* **Exhibit K**.

II. STATEMENT OF THE ISSUES

1) Under Texas law, an insured is only entitled to recover that portion of the damage caused solely by the covered peril when covered and non-covered perils combine to create a loss. Has Plaintiff presented evidence segregating its damages between the covered and non-covered, or excluded, causes of loss?

2) Additionally, Plaintiff's various claims sounding in bad faith require proof that Meridian committed an independent tort in the handling of the claim, and that there was no reasonable basis for its coverage decision. Plaintiff cannot meet this burden. At most, Plaintiff can show there is an ongoing dispute between the parties and their experts concerning the cause and scope of some damage to Plaintiff's property. However, a bona fide dispute does not rise to the level of bad faith, thus Plaintiff's bad faith claims fail as a matter of law.

3) Finally, Plaintiff cannot meet its burden to establish any violations under Section 542.058 of the Texas Insurance Code or Deceptive Trade Practices Act, thus Meridian is entitled to summary judgment on those claims as well.

4) Meridian is therefore entitled to summary judgment on all claims asserted by Plaintiff in this lawsuit. Meridian respectfully asks this Court to grant summary judgment on all claims and dismiss this lawsuit in its entirety.

I. SUMMARY JUDGMENT EVIDENCE

3. In support of this Motion for Summary Judgment, Meridian relies upon and incorporates by reference that following materials that are or could be presented in a form that would be admissible evidence:

Exhibit A: Policy

Exhibit B: July 12, 2022, First Notice of Loss

Exhibit C: July 12, 2022, Claim Acknowledgment

Exhibit D: Public Adjusting Contract

Exhibit E: August 10, 2022, Seek Now Report

Exhibit F: Public Adjuster Estimate & Report

Exhibit G: August 29, 2022, Letter to Public Adjuster

Exhibit H: October 21, 2022, Estimate

Exhibit I: October 21, 2022, Coverage Letter

Exhibit J: November 6, 2022, The Dick Law Firm Letter of Representation

Exhibit K: November 16, 2022, Quantum Claims Consulting Estimate

Exhibit L: **December 20, 2023, Reinspection Request**

Exhibit M: **March 27, 2023, Email from The Dick Law Firm**

Exhibit N: **Previous Claim Appraisal Award**

Exhibit O: **Deposition Excerpts of Plaintiff Billy Reagins**

Exhibit P: **Deposition Excerpts of Plaintiff's Expert Brandon Gadrow**[1]

II. SUMMARY JUDGMENT STANDARD

4. Summary judgment is proper when the "pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). "The party moving for summary judgment must 'demonstrate the absence of a genuine issue of material fact,' but need not negate the elements of the nonmovant's case." *Little v. Liquid Air Corp.,* 37 F.3d 1069, 1075 (5th Cir. 1994) (en bane). Moreover, Rule 56 of the Federal Rules of Civil Procedure "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986).

5. Once the moving party meets its initial burden of pointing out the absence of a genuine issue for trial, the burden is on the nonmoving party to come forward with competent summary judgment evidence establishing the existence of a material factual dispute. FED. R. CIV. P. 56(c); *Clark v. America's Favorite Chicken,* 110 F.3d 295 (5th Cir. 1997) (citation omitted). Inferences favorable to the party opposing the motion are drawn. *Wright v. Ford Motor Co.,* 508 F.3d 263, 274 (5th Cir. 2007). However, the nonmovant's burden is not satisfied with "some metaphysical

[1] Defendant will supplement with the transcript when it is received from the Court Reporter.

doubt as the material facts." *MatsushitaElec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586, 106 S.Ct. 1348, 1986 L.Ed. 38 (1986); *Wright,* 508 F.3d at 274.

III. ARGUMENT & AUTHORITIES

A. PLAINTIFF CANNOT MEET ITS BURDEN OF PROVING THE STORM IN QUESTION CAUSED THE DAMAGES IT SEEKS AND AS A RESULT ITS BREACH OF CONTRACT AND BAD FAITH CLAIMS FAIL.

6. To recover under an insurance policy, an insured must plead and prove facts showing his damages are covered by the policy. *See Employers Casualty Co. v. Block,* 744 S.W.2d 940, 944 (Tex. 1988), *overruled in part on other grounds by State Farm Fire & Cas. Co. v. Gandy,* 925 S.W.2d 696, 714 (Tex. 1996). "When covered and excluded perils combine to cause an injury, the insured must present some evidence affording the jury a reasonable basis on which to allocate the damage." *Lyons v. Millers Cas. Ins. Co. of Tex.,* 866 S.W.2d 597, 601 (Tex. 1993). Under this rule, called the concurrent cause doctrine, the insured has the burden of segregating the damage attributable solely to the covered event from other damages. *See Wallis v. United Servs. Auto. Ass'n,* 2 S.W.3d 300, 303 (Tex. App.-San Antonio 1999, pet. denied). "Failure to provide evidence upon which a jury or court can allocate damages between those that resulted from covered perils and those that did not is fatal to an insured party's claim." *Nat'l Union Fire Ins. Co. of Pittsbugh, Pa. v. Puget Plastics Corp.,* 735 F. Supp. 2d 650, 669 (S.D. Tex. 2010); *Hamilton Props. v. Am. Ins. Co.,* 643 Fed. App'x 437, 442 (5th Cir. 2016) (affirming summary judgment for insurer where insured showed the damage could be "linked" to a particular storm but did "nothing to enable a jury to segregate damages for only that property damage caused by covered perils that occurred within the policy period").

7. Plaintiff cannot meet its burden to segregate the damage attributable solely to the March 22, 2022, storm from other damages. Plaintiff admitted he has not made all the repairs to his

property.[2] Moreover, the appraisal award from Plaintiff's freeze-related claim includes damages Plaintiff claims are a result of the March 2022 storm. *See* **Exhibit N**. Furthermore, Plaintiff testified his public adjuster filed the claim with Meridian as a result of wind/hail damage to the roof and the interior. ***See*** **Exhibits B & O at 25:8-15**.

8. In his deposition, Plaintiff testified: (1) he cannot remember the date the damage occurred;[3] (2) he was under the impression this claim is a result of the February 2021 freeze even though the appraisal award has already been issued and paid;[4] (3) he does not know if the wind/hail storm caused damage to both the roof and pipes;[5] (4) he is not sure how Mr. Lackey filed the claims or how the claims were processed because he was instructed by Mr. Lackey to not talk to anyone from his insurance company;[6] (5) he is unaware if his property was actually damaged on March 22, 2022 because he was told to stay out of it [i.e. the insurance claim];[7] and (6) he cannot remember when his roof first started leaking.[8]

9. Despite claiming the damage to his property was caused by wind/hail, Plaintiff does not remember: (1) how or why the claim was reported; (2) what caused him or someone else to report the claim; (3) when he noticed the damage; (4) when the damage occurred, or (5) if the damage was a result of the freeze in February 2021 or the March 22, 2022 storm. Overall, Plaintiff has no knowledge of any the facts surrounding his claim because he was told by his public adjuster to stay out of it. Moreover, Plaintiff has no idea an appraisal award was issued and paid on his claim

[2] ***See*** Exhibit O Plaintiff's Deposition at 18:17-19.
[3] *See* Exhibit O; Deposition of Plaintiff 25:22-25.
[4] *See* Exhibit O; Deposition of Plaintiff 26:1-25 & 27:1-4.
[5] *See* Exhibit O; Deposition of Plaintiff 27:23-25 & 28:1-25.
[6] *See* Exhibit O; Deposition of Plaintiff 29:3-21
[7] *See* Exhibit O; Deposition of Plaintiff 70:4-12.
[8] *See* Exhibit O; Deposition of Plaintiff 75:10-12.

relating to the February 2021 freeze.[9] Ultimately, Plaintiff has no way of determining if the claimed in this suit occurred is a result of the March 22, 2022, storm.

10. Further, Plaintiff's retained expert, Brandon Gadrow, testified that he did not review and weather data, because he takes the date of loss provided to him by Plaintiff as true. Additionally, Mr. Gadrow admitted to items in his November 16, 2022, estimate were contained in his previous estimate for the claim where the appraisal award has been paid.[10]

11. Plaintiff cannot meet its burden to segregate covered damages from the March 2022 storm from other covered and non-covered damages sustained on another date. Plaintiff therefore cannot satisfy the causation element of his breach of contract claim, and Meridian is entitled to summary judgment on the breach of contract claim.

12. Because Plaintiff cannot meet its burden on causation, Plaintiff's bad faith claims also fail. Generally speaking, "an insured cannot recover policy benefits for an insurer's statutory violation if the insured does not have a right to those benefits under the policy." *USAA Tex. Lloyds Co. v. Menchaca,* 545 S.W.3d 479, 490 (Tex. 2018). Further, none of the exceptions identified by the Supreme Court in *Menchaca* apply here--Plaintiff has not pled, nor could he prove benefits-lost or independent injury. *See id.* at 497-500. In other words, since Plaintiff failed to meet its burden on causation means, no benefits are owed under the policy, Plaintiff cannot satisfy the damages element of his bad faith claims. In other words, Plaintiff cannot recover on his bad faith claims *even if it* could prove Meridian acted in bad faith.

13. Meridian is therefore entitled to summary judgment on Plaintiff's claims for breach of contract, violations of Chapters 541 (unfair settlement practices) of the Texas Insurance Code, and

[9] *See* Exhibit O; Deposition of Plaintiff 26:14-22. *See also* Exhibit N.
[10] *See* Exhibit P; Deposition of Brandon Gadrow. Defendant will supplement with the relevant portions of the transcript when received. *See also* Exhibit N.

common law breach of the duty of good faith and fair dealing, based on Plaintiff's inability to meet its burden on causation.

B. MERIDIAN IS ADDITIONALLY AND INDEPENDENTLY ENTITLED TO SUMMARY JUDGMENT OF PLAINTIFF'S BAD FAITH CLAIM BECAUSE THE DISPUTE IS AT MOST A *BONA FIDE* COVERAGE DISPUTE.

14. An insurer's failure to pay a covered claim is ordinarily a breach of contract that does not alone entitle a plaintiff to mental anguish or exemplary damages. *Transportation Ins. Co. v. Moriel,* 879 S.W.2d 10, 17 (Tex. 1994). "The threshold of bad faith is reached when a breach of contract is accompanied by an independent tort." *Id.*

15. A cause of action exists for the breach of the duty of good faith and fair dealing when "there is no reasonable basis for a denial of a claim or delay in payment or a failure on the part of the insurer to determine whether there is any reasonable basis for the denial or delay." *Arnold v. National County Mut. Fire Ins., 725 S.W.2d 165, 167 (Tex. 1987)*. The common law and statutory standards are identical-when there is no merit to a common law bad faith claim asserting a wrongful denial of insurance benefits, any statutory claims for bad faith under the Texas Insurance Code must also fail. *See Higginbotham v. State Farm Mut. Auto Ins. Co*., 103 F.3d 456, 460 (5th Cir. 1997) ("Although these claims are individual causes of action which do not depend on each other for support, Texas courts have clearly ruled that these extra-contractual tort claims require the same predicate for recovery as bad faith causes of action in Texas.")

16. In considering whether to grant a summary judgment on bad faith, a court should distinguish between the evidence supporting the contract issues and the tort issue. *Lyons v. Miller Cas. Ins. Co.,* 866 S.W.2d 597, 601 (Tex. 1993). The issue of bad faith does not focus on whether the claim was valid. *Id.* "The evidence must relate to the tort issue of [whether the insurer's liability had become reasonably clear], not just to the contract issue of coverage." *Id.* at 600.

17. Whether the insurer's liability had become reasonably clear must be judged by the facts before the insurer at the time the claim was denied. *Viles v. Sec. Nat'l Ins. Co.,* 788 S.W.2d 566, 567 (Tex. 1990). Evidence that shows only a bona fide coverage dispute does not, standing alone, demonstrate bad faith. *State Farm Lloyds v. Nicolau,* 951 S.W.2d 444, 448 (Tex. 1997); *Moriel,* 879 S.W.2d at 17. "Nor is bad faith established if the evidence shows the insurer was merely incorrect about the factual basis for its denial of the claim, or about the proper construction of the policy." *Moriel,* 879 S.W.2d at 18. "A simple disagreement among experts about whether the cause of loss is one covered by the policy will not support a judgment for bad faith." *Id.*

18. Here, the ongoing disagreement between the parties is the scope of damages caused by a March 22, 2022, wind/hailstorm. Meridian inspected Plaintiff's property, identified damage, and issued its coverage decision.

19. The parties' disagreement over the scope of damages caused by the March 22, 2022, storm has continued into litigation. Plaintiffs have not produced any evidence or retained an expert to testify as to why Meridian investigation was unreasonable. Plaintiff here fails to provide any expert testimony, proof of standard industry practices, or legal authority to support its claim that Meridian's actions were unreasonable. *Humphries v. State Farm Lloyds*, No. 3:20-CV-01163, 2022 WL 705860, at *2 (N.D. Tex. Mar. 9, 2022) (quoting *Nino v. State Farm Lloyds,* No. 7:13-CV-318, 2014 WL 6674418, at *6 (S.D. Tex. Nov. 24, 2014)); *Main St. Baptist Church v. Church Mut. Ins. Co.*, No. 6:23-CV-124-JDK, 2024 WL 4101938, at *6 (E.D. Tex. July 23, 2024)

20. The current dispute does not give rise to an independent tort or damages separate and apart from any denial of Policy benefits, and this is fatal to Plaintiff's extra-contractual claims. These facts are similar to *Nino v. State Farm Lloyds* and *Kahlden v. Safeco Ins. Co.,* among others, where the insurer was entitled to summary judgment on the plaintiff's bad faith claims. *Nino v. State*

Farm Lloyds, No. 7:13-CV-318, 2014 U.S. Dist. LEXIS 163993 (S.D. Tex. 2014); *Kahlden v. Safeco Ins. Co. of Ind.,* No. H-10-2001, 2011 U.S. Dist. LEXIS 168134 (S.D. Tex. 2011). In *Nino,* the plaintiff argued (as here) that the investigation of her claim was unreasonable because the insurer's two inspections of the property were inadequate and results oriented. *Nino,* 2014 U.S. Dist. LEXIS 163993 at *10. The Court found:

> "There *is* ample evidence that Mr. Crump and Mr. Wallis, based on their expertise and inspection of the property, determined the property damage was not caused by hail, contrary to the findings by Plaintiffs adjusters. Again, evidence that shows the insurer was incorrect about the factual basis for its denial of the claim is not evidence of bad faith, nor does a finding of hail damage by one expert prove another expert's contrary finding was based on an inadequate inspection.

Id. at *15. The Court refused to permit the bad faith claims to proceed based on Plaintiff's lay opinion alone. "Indeed, adopting such amorphous position, whereby any plaintiff can impute bad faith to an insurer by opining about the unreasonableness of an adjuster's actions, can only be problematic and result in absurd results." *Id.* at *16.

21. Similarly, in *Kahlden,* the Court addressed a plaintiffs expert's estimate of damages, finding "a difference between the Parties' assessments of damage is not evidence of bad faith." *Kahlden,* 2011 U.S. Dist. LEXIS 168134 at *18. The Court also rejected the plaintiff's criticism of the insurer's handling of the claim, finding "the fact that an insurance company would agree to perform multiple assessments, resulting in additional payments, is not, by itself, evidence of bad faith." *Id.* The Court concluded by holding that the record showed "no more than a bona fide dispute between the damage assessments from Defendant's four inspectors, and the contractors and experts hired by Plaintiffs." *Id.* at* 19.

22. Like *Nino* and *Kahlden,* the current dispute is-at most-a contractual dispute. According to Plaintiff and his representatives, the property's exterior and interior were damaged as a result of a March 22, 2022, storm. Meridian inspected the property multiple times and made its coverage

decision based on what it observed during the inspections. The mere fact, Plaintiff asserts Meridian underpaid the claim does not rise to the level of bad faith. In addition, despite Plaintiff's reporting of the claim, Meridian investigated the claim and made its coverage decision. The discovery process in this litigation has revealed that the damage observed to the property predates the date of loss-perhaps by several years.

23. The parties disagree on the cause, scope, and cost of repair for some of the alleged damages to Plaintiff's property. This mere disagreement is nothing more than a bona fide coverage dispute, and Plaintiff's bad faith claims against Meridian (violations of Chapters 541 and of the Texas Insurance Code and breach of the duty of good faith and fair dealing) should be dismissed.

24. Further, Plaintiff also alleges that Defendant's conduct in this case was committed knowingly and recklessly. Plaintiff claims it is entitled to treble damages under the Texas Insurance Code and exemplary damages under the common law. Because there is no culpable conduct to support a finding on bad faith, Plaintiff cannot recover treble or exemplary damages. Meridian is entitled to judgment as a matter of law on Plaintiff's claims for treble or exemplary damages.

25. Plaintiff also alleges Meridian misrepresented material facts to Plaintiff. However, Plaintiff cannot identify any misrepresentation, during the claims handling portion of this claim, when asked about any misrepresentation made by Meridian, he testified "nothing comes to mind."[11] Accordingly, Meridian is entitled to summary judgment as a matter of law of Plaintiff's claims for treble or exemplary damages.

C. PLAINTIFF'S CLAIMS UNDER THE PROMPT PAYMENT OF CLAIMS ACT FAIL

26. Finally, Plaintiff asserts a claim for violation of Section 542.058 of the Prompt Payment of Claims Act. Meridian is entitled to summary judgment on that claim.

[11] *See* Exhibit O; Deposition of Plaintiff 71:4-25; 72:1-3.

27. Section 542.058 provides that an insurer must make payment on the claim within 60 days after receiving all items, statements, and forms reasonably requested. TEX. INS. CODE § 542.058. As stated above, Meridian inspected the property and estimated the damages observed. Moreover, because Plaintiff's contract claim fails for the reasons explained above, there can be no additional payment owed. Meridian is therefore entitled to summary judgment on all claims brought under Section 542.058 of the Texas Insurance Code.

CONCLUSION

Meridian is entitled to summary judgment on each and every claim Plaintiff has asserted in this lawsuit. Therefore, Meridian respectfully asks the Court to grant this motion for summary judgment, dismiss all claims asserted in this lawsuit, and for such other and further relief to which it may be justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: */s/ J. Mark Kressenberg*

J. Mark Kressenberg
State Bar No. 11725900
mkressenberg@thompsoncoe.com
4400 Post Oak Parkway, Suite 1000
Houston, TX 77027
Telephone: (713) 403-8379
Telecopy: (713) 403-8299
~**and**~
Kolby J. Keller
State Bar No. 24119382
kkeller@thompsoncoe.com
700 N. Pearl Street, 25th Floor
Dallas, Texas 75201
Telephone: (214) 871-8200
Facsimile: (214) 871-8209

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2025, a true and correct copy of the foregoing document was served in accordance with the Federal Rules of Civil Procedure upon all known parties and counsel of record, including the parties identified below.

Eric B. Dick
Dick Law Firm
3701 Brookwoods
Houston, TX 77092
Phone: 832-207-2007
COUNSEL FOR PLAINTIFF

/s/ J. Mark Kressenberg
J. Mark Kressenberg