UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ELIO & LUCIA MULAS,

Plaintiffs,

v. Case No.: 2:24-cv-00534-SPC-KCD

WESTCHESTER SURPLUS INSURANCE COMPANY,

Defendant,
_____/

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Defendant's Motion for Summary Judgment seeks to dispose of this case by mischaracterizing both the record and the nature of the breaches at issue. Before this lawsuit was filed, Defendant committed two independent breaches of the insurance contract. First, Defendant partially denied coverage for multiple categories of hurricane-related damage identified in Plaintiffs' public adjuster estimate, taking a causation and coverage position that excluded entire areas of loss. Second, even for the damages Defendant did acknowledge were covered, Defendant underpaid the actual cash value of the loss by limiting the scope and valuation of those damages. For the categories of damage Defendant denied, Defendant issued no actual cash value payment at all.

Plaintiffs disputed Defendant's coverage determination and valuation before suit by submitting a detailed public adjuster estimate that identified additional categories of damage and expressly set forth both replacement cost value and actual cash value amounts. Defendant nonetheless stood by its partial denial and limited payment. The record also reflects competing engineering opinions regarding causation and undisputed evidence that Defendant failed to pay the full actual cash value of the covered loss.

Because genuine disputes of material fact exist as to causation, coverage, and valuation, and because Defendant's own exhibits contradict the assertions made in its motion, summary judgment is improper and must be denied.

II. STANDARD OF REVIEW

Summary judgment is appropriate only where the moving party demonstrates that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The burden rests squarely on the movant, and all evidence must be viewed in the light most favorable to the non-moving party, with all reasonable inferences drawn in that party's favor. Tolan v. Cotton, 572 U.S. 650, 657 (2014).

A court may not weigh the evidence, make credibility determinations, or resolve factual disputes at the summary judgment stage. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Where the record contains competing expert

opinions, summary judgment is improper because such disputes must be resolved by the trier of fact. Jones v. UPS Ground Freight, 683 F.3d 1283, 1292 (11th Cir. 2012).

In insurance cases, disputes concerning causation, scope of loss, and the amount owed under the policy are particularly ill-suited for summary judgment, especially where an insurer has partially denied coverage and the insured has presented competent evidence contradicting the insurer's position. Summary judgment cannot be used to resolve a battle of experts or to insulate an insurer from liability by adopting a selective reading of the record.

III. PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF MATERIAL FACTS

1. Paragraph 1

Defendant's Statement: "Westchester issued Policy No. FSF16624421 001 to Plaintiffs, providing certain coverage for a commercial rental property located at 3811 Tamiami Trail, Port Charlotte, FL 33952, for the policy period of July 19, 2022, through July 19, 2023."

Response: Plaintiffs admit this statement. (Doc. 56 ¶ 1).

2. Paragraph 2

Defendant's Statement: "On October 11, 2022, Plaintiffs submitted a claim to Westchester for damage to their property allegedly caused by Hurricane Ian on or around September 28, 2022."

Response: Plaintiffs admit this statement. (Doc. 56 ¶ 2).

3. ***Paragraph 3***

Defendant's Statement: "Westchester conducted a thorough investigation of Plaintiffs' loss, including an inspection of the property by an independent adjuster on October 18, 2022, and an engineer on February 21, 2023."

Response: Plaintiffs dispute that Westchester conducted a thorough investigation. (Doc. 56 ¶ 3). Plaintiffs submitted a detailed public adjuster estimate identifying numerous categories of Hurricane Ian damage that were not included in Westchester's estimate and were later denied. (Peninsula Public Adjuster Estimate, Ex. 1). Plaintiffs also submitted engineering evidence contradicting Westchester's causation determinations for those denied areas. (Crowson Engineering Report; Crowson Affidavit, Exs. 2 & 3). The existence of these denied categories and competing expert opinions demonstrates that Westchester's investigation failed to identify or account for the full scope of loss.

4. ***Paragraph 4***

Defendant's Statement: "Westchester's investigation determined that the storm had caused an electrical mast to fall on the roof, that three storefront windows had broken, and water had entered the property damaging the

carpet near the broken windows."

Response: Plaintiffs admit that Westchester reached these determinations but dispute that these were the only storm-related damages caused by Hurricane Ian. (Doc. 56 ¶ 4; PA Estimate; Crowson Affidavit, Exs. 1 & 3).

5. ***Paragraph 5***

Defendant's Statement: "Westchester's independent adjuster estimated the cost of repairing the storm-caused damage as $21,314.49. After applying the Policy's $19,000.00 deductible, the net payment due came to $2,314.49."

Response: Plaintiffs admit this statement. (Doc. 56 ¶ 5).

6. ***Paragraph 6***

Defendant's Statement: "On December 22, 2022, Westchester provided the field adjuster's estimate to Plaintiffs and subsequently paid $2,314.49 for the storm related damage."

Response: Plaintiffs admit this statement. (Doc. 56 ¶ 6).

7. ***Paragraph 7***

Defendant's Statement: "On or about January 23, 2023, Plaintiffs' public adjuster provided Westchester an estimate of alleged storm damage totaling $218,740.60."

Response: Plaintiffs admit this statement. (Doc. 56 ¶ 7).

8. Paragraph 8

Defendant's Statement: "The public adjuster's estimate calculated the loss on a replacement cost value (RCV) basis without reduction for depreciation."

Response: Plaintiffs dispute this statement. (Doc. 56 ¶ 8). The public adjuster estimate expressly includes line items for RCV, depreciation, and ACV, with depreciation calculated at $0.00, resulting in identical RCV and ACV totals. (Peninsula Public Adjuster Estimate Ex. 1). The estimate therefore includes an ACV calculation on its face.

9. Paragraph 9

Defendant's Statement: "On February 21, 2023, Westchester's engineering consultant, Stephens Engineering Consultants, Inc., inspected the property."

Plaintiffs' Response: Plaintiffs admit this statement. (Doc. 56 ¶ 9).

10. Paragraph 10

Defendant's Statement: "Stephens Engineering Consultants, Inc. determined that there was no windstorm-related damage to the roof of the property, and that any moisture intrusion was not the result of a storm-created opening."

Plaintiffs' Response: Plaintiffs admit that Stephens Engineering reached

these conclusions, but dispute their accuracy and completeness. (Doc. 56 ¶ 10). Plaintiffs' engineering expert reached contrary conclusions regarding hurricane causation, as set forth in Plaintiffs' expert report and affidavit. (Crowson Engineering Report; Crowson Affidavit, Exs. 2 & 3).

11. Paragraph 11

Defendant's Statement: "On April 26, 2023, Westchester issued a partial denial letter to Plaintiffs, advising that portions of the claimed damage were not covered under the Policy."

Plaintiffs' Response: Plaintiffs admit this statement. (Doc. 56 ¶ 11).

12. Paragraph 12

Defendant's Statement: "On April 19, 2024, Plaintiffs filed this lawsuit against Westchester."

Plaintiffs' Response: Plaintiffs admit this statement. (Doc. 56 ¶ 12).

13. Paragraph 13

Defendant's Statement: "At no time prior to filing suit did Plaintiffs provide Westchester with a competing actual cash value estimate or notify Westchester that they disputed Westchester's coverage determination."

Plaintiffs' Response: Plaintiffs dispute this statement. (Doc. 56 ¶ 13). Prior to litigation, Plaintiffs submitted a public adjuster estimate identifying additional categories of damage, expressly setting forth both replacement

cost value and actual cash value amounts, and disputing Westchester's coverage determination by including damages Westchester later denied. (Peninsula Public Adjuster Estimate; April 26, 2023 Denial Letter, Exs. 1 & 4). Defendant attached this estimate to its own Motion.

14. Paragraph 14

Defendant's Statement: "At no time prior to filing suit did Plaintiffs provide Westchester with documentation showing that repairs were made in excess of Westchester's payment."

Plaintiffs' Response: Plaintiffs admit this statement. (Doc. 56 ¶ 14). Plaintiffs dispute any implication that such documentation was required, as Plaintiffs seek unpaid actual cash value damages and Defendant had partially denied coverage prior to suit.

15. Paragraph 15

Defendant's Statement: "During the course of litigation, Plaintiffs retained an engineering firm to inspect the property."

Plaintiffs' Response: Plaintiffs admit this statement. (Doc. 56 ¶ 15).

16. Paragraph 16

Defendant's Statement: "Plaintiffs' engineering consultant concluded that no wind damage was apparent to the roofing surface from Hurricane Ian."

Plaintiffs' Response: Plaintiffs admit that this language appears in

Plaintiffs' engineer's report, but dispute Defendant's characterization of its meaning. (Doc. 56 ¶ 16). Plaintiffs' engineer clarified that the roof had been replaced prior to inspection and that the absence of visible membrane damage does not preclude hurricane-caused intrusion through the roofing system. (Crowson Affidavit ¶ 7, Ex. 3).

17. Paragraph 17

Defendant's Statement: "The Policy excludes interior water damage unless the water enters through a storm-created opening."

Plaintiffs' Response: Plaintiffs admit this statement. (Doc. 56 ¶ 17).

18. Paragraph 18

Defendant's Statement: "Plaintiffs' engineering consultant agreed that the broken windowpanes were caused by wind and wind-borne debris."

Plaintiffs' Response: Plaintiffs admit this statement. (Doc. 56 ¶ 18).

19. Paragraph 19

Defendant's Statement: "Plaintiffs replaced the entire roof and ceiling of the property and did not provide receipts for the replacement until June 2025."

Plaintiffs' Response: Plaintiffs admit this statement. (Doc. 56 ¶ 19).

IV. PLAINTIFFS' ADDITIONAL UNDISPUTED MATERIAL FACTS

Prior to the filing of this lawsuit, Plaintiffs submitted a detailed public adjuster

estimate prepared by Peninsula Public Adjusters identifying extensive damage to the insured property caused by Hurricane Ian. The estimate expressly included line items for replacement cost value ("RCV"), depreciation, and actual cash value ("ACV"), with depreciation calculated at zero percent, resulting in identical RCV and ACV totals. (Peninsula Public Adjuster Estimate Ex. 1).

The Peninsula Public Adjuster estimate quantified total damages in excess of $200,000, including but not limited to roofing-related components, gutters and downspouts, electrical components, windows, ceiling tiles, flooring, content manipulation, debris removal, permits, HVAC-related components, and interior finishes. (Id.).

Defendant issued its own estimate reflecting a total replacement cost value of $21,314.45 and an identical actual cash value of $21,314.45, with depreciation listed as $0.00. (Defendant Estimate, Ex. 5).

Defendant applied the policy deductible of $19,000.00 and issued a net payment to Plaintiffs in the amount of $2,314.49. (Id.; Payment Summary, Ex. 4).

Defendant also issued payment in the amount of $6,815.68 for interior carpet damage, which Plaintiffs fully credit and do not seek to recover again. (Defendant Estimate, Ex. 5).

By letter dated April 26, 2023, Defendant issued a partial denial of coverage for multiple categories of damage identified in Plaintiffs' public adjuster estimate,

including roof-related components, gutters and downspouts, electrical components, interior finishes, ceiling tiles, flooring, content manipulation, and other building components. (April 26, 2023 Denial Letter, Ex. 4).

Defendant issued no actual cash value payment for the categories of damage it denied in its April 26, 2023 denial letter. (Id.; Defendant Estimate, Ex. 5).

Plaintiffs retained engineer Bradley Crowson, P.E., to evaluate the cause and extent of the damages. Mr. Crowson opined, to a reasonable degree of engineering certainty, that Hurricane Ian caused wind-driven rain intrusion through the roofing system resulting in interior ceiling damage, as well as exterior wind-related damage including damage to the electrical mast and gutter system. (Crowson Engineering Report at P. 3; Crowson Affidavit ¶¶ 9-10, Exs. 2 & 3).

Mr. Crowson further explained that the absence of visible roof membrane damage following roof replacement does not preclude hurricane causation and that wind-driven rain can intrude through roofing seams and components without leaving obvious post-repair membrane damage. (Crowson Affidavit ¶¶ 7, Ex. 3).

Plaintiffs retained construction estimator Adam Mrozek to quantify the actual cash value of the hurricane-related damages identified by Plaintiffs' engineering evidence and not paid by Defendant. (Mrozek Estimate, Ex. 6).

Mr. Mrozek's estimate assigns actual cash value amounts to hurricane-related damages supported by Plaintiffs' engineering evidence, including gutter and

downspout damage, electrical mast and meter-related damage, interior window and ceiling tile damage, sales floor ceiling system damage, and content manipulation required to perform ceiling repairs. (Mrozek Estimate Ex. 6).

The total actual cash value of the hurricane-related damages quantified in Mr. Mrozek's estimate equals $57,914.40. (Id.).

After crediting Defendant's net payment of $2,314.49, the carpet payment of $6,815.68, and the policy deductible of $19,000.00, Plaintiffs' evidence reflects $36,599.91 in unpaid actual cash value damages attributable to Hurricane Ian. (Defendant Estimate; Mrozek Estimate, Exs. 5 & 6).

V. ARGUMENT

A. PLAINTIFFS CAN ESTABLISH A BREACH OF CONTRACT BECAUSE DEFENDANT PARTIALLY DENIED COVERED DAMAGES AND FAILED TO PAY THE ACTUAL CASH VALUE OWED PRIOR TO SUIT

Defendant argues Plaintiffs cannot establish a breach of contract as a matter of law. The record demonstrates otherwise. Florida law, together with the policy's Loss Settlement provisions, imposes a clear duty on insurers to pay the actual cash value ("ACV") of covered damages regardless of whether repairs have been completed. (Policy, Loss Settlement, Ex. 7). While replacement cost benefits may be conditioned upon completion of repairs, ACV benefits are not. Buckley Towers Condo., Inc. v. QBE Ins. Corp., 395 F. App'x 659, 663 (11th Cir. 2010). Defendant breached that duty before suit in multiple, independent ways: (1) by partially

denying coverage for hurricane-related damages and issuing no ACV payment for those denied categories; (2) by underpaying ACV for the categories Defendant purported to open coverage for; and (3) by misrepresenting the record to argue Plaintiffs failed to submit a competing ACV estimate or proof of repairs, neither of which defeats a breach where coverage and causation are disputed.

First, Defendant issued a partial denial of multiple categories of damage that Plaintiffs presented as hurricane-related and covered. (April 26, 2023, Denial Letter, Ex. 4). Those denied categories were specifically identified in Plaintiffs' public adjuster estimate and included, among other things, roof-related damage and resulting interior water intrusion, interior ceiling and moisture damage, and exterior and window-related components that Defendant later addressed in separate sections of its Motion. (Peninsula Public Adjuster Estimate, Ex. 1; April 26, 2023, Denial Letter, Ex. 4; Defendant MSJ doc 56). Defendant's denial was not a mere disagreement over price; it was a causation-based exclusion of entire areas of loss. Defendant issued no ACV payment for those denied categories.

Under Florida law, a partial denial of claimed covered damages constitutes a breach of the insurance contract as to those damages and excuses any further pre-suit obligation by the insured to continue quantifying or supplementing estimates for the denied items. Defendant cannot deny coverage on causation grounds and then

argue Plaintiffs were required to perform additional pre-suit steps to preserve a claim for those denied damages.

Second, even as to the categories of damage Defendant acknowledged were covered, Defendant breached the policy by failing to pay the full ACV owed. Defendant's own estimate reflects a replacement cost value ("RCV") of $21,314.45 and an identical ACV of $21,314.45, with $0.00 depreciation, from which Defendant applied the $19,000.00 deductible and issued a net payment of approximately $2,314.49. (Defendant Estimate; Payment Summary, Exs. 5 & 4). Defendant thus expressly recognized that ACV was owed, but paid only a fraction of the covered loss.

By contrast, prior to suit, Plaintiffs submitted a public adjuster estimate that expressly itemized both RCV and ACV, with depreciation calculated at zero percent, resulting in identical ACV and RCV totals. (Peninsula Public Adjuster Estimate, Ex. 1). That estimate quantified total damages in excess of $200,000, including the categories Defendant partially denied and failed to pay. (Id.). Specifically, the additional areas on the PA's estimate included full roof replacement, stucco damage, gutters, sign damage, camera damage, electrical panel damage, guttrer damage, content manipulation, debris removal, HVAC damage, interior walls damage, all of which were admittedly denied by the insurance company. (Id.) Defendant attached

this estimate to its own Motion, making undeniable that Plaintiffs submitted an ACV estimate before filing suit.

Third, Defendant argues Plaintiffs cannot establish breach because Plaintiffs did not provide proof that repairs were completed prior to suit. That argument misstates the law and ignores the nature of the dispute. Proof of completed repairs is relevant only to replacement cost benefits, not to ACV. § 627.7011(3), Fla. Stat.; Buckley Towers, 395 F. App'x at 663. Plaintiffs are not required to complete repairs—or prove completion of repairs—before disputing Defendant's coverage determination, scope, or ACV underpayment. Where, as here, Defendant partially denied coverage and failed to pay the ACV owed, Plaintiffs were entitled to file suit to resolve those disputes.

Finally, Defendant's attempt to argue that Plaintiffs cannot contest the ACV payment because Plaintiffs allegedly failed to submit a competing ACV estimate collapses when the record is applied. Plaintiffs submitted a public adjuster estimate expressly setting forth ACV amount of $218,740.60, Defendant paid approximately $21,314.45 in ACV (before deductible), and Defendant issued no ACV payment at all for the denied categories. (Peninsula Public Adjuster Estimate; Defendant Estimate; Denial Letter, Exs. 5 & 4). That disparity alone establishes a genuine dispute of material fact as to breach and damages. Underpayment of ACV for

covered damages constitutes an independent breach of the policy. Trinidad v. Fla. Peninsula Ins. Co., 121 So. 3d 433, 440 (Fla. 2013).

Because the record demonstrates a partial denial of covered damages, a failure to pay ACV for denied categories, and a failure to pay the full ACV owed even for admitted categories, Defendant cannot establish entitlement to summary judgment. These breaches existed at the time suit was filed and are supported by Plaintiffs' estimates, Defendant's own estimate and denial letter, and Plaintiffs' engineering causation evidence. (April 26, 2023 Denial Letter; Peninsula Public Adjuster Estimate; Crowson Affidavit; Defendant Estimate, Exs. 4 & 1 & 3 & 5). Summary judgment must be denied.

B. PLAINTIFFS HAVE PRESENTED COMPETENT EXPERT EVIDENCE CREATING GENUINE DISPUTES OF MATERIAL FACT AS TO CAUSATION AND COVERAGE

Defendant argues that summary judgment is warranted because Plaintiffs allegedly lack competent evidence establishing that the damages claimed were caused by Hurricane Ian and are therefore covered under the policy. Defendant's argument rests on a selective and misleading reading of the engineering evidence and improperly asks this Court to resolve disputed expert opinions and factual inferences. The record demonstrates otherwise.

Plaintiffs have submitted sworn expert engineering evidence that directly contradicts Defendant's causation conclusions and establishes a genuine dispute of material fact as to whether Hurricane Ian caused damage to the insured property, including damage to the roofing surface resulting in ensuing interior water intrusion. These disputes alone preclude summary judgment.

1. Defendant Mischaracterizes Plaintiffs' Engineer's Opinions Regarding Roof Damage

Defendant repeatedly asserts that Plaintiffs' engineer "agreed" there was no hurricane-related roof damage. That assertion is false and contradicted by the sworn affidavit and opinions of Plaintiffs' engineer, Bradley Crowson, P.E.

In his affidavit, Mr. Crowson expressly opines that Hurricane Ian caused damage to the roofing surface and that such damage allowed water intrusion into the interior of the building. (Crowson Aff. ¶¶ 5–6, Ex. 3). Mr. Crowson explains that his inspection occurred after the roof had already been replaced and that, as a result, obvious roof membrane damage was not visible at the time of his inspection. (Id. ¶ 7). He further explains that hurricane-related roof damage does not require missing or visibly torn membrane and that wind forces can compromise roofing seams and components in a manner that permits water intrusion without leaving obvious post-repair visual indicators. (Id.).

To the contrary, Mr. Crowson expressly opined—based on his engineering assessment, review of photographs taken shortly after Hurricane Ian, and the documented timing and pattern of the damage—that the interior ceiling moisture staining was caused by wind-driven rain associated with Hurricane Ian entering through the roofing system. (Crowson Report at P. 3). Mr. Crowson explained that, even in the absence of visible membrane blow-off, hurricane-force winds can drive rain through compromised roofing seams, flashing transitions, and other roofing vulnerabilities, resulting in interior water intrusion. (Id.).

Mr. Crowson further clarified these opinions in his sworn affidavit, expressly rejecting Defendant's contention that the absence of visible membrane damage forecloses hurricane causation. (Crowson Aff. ¶ 7). He testified that "the absence of a torn membrane does not rule out storm-caused water intrusion," and that wind-driven rain from a severe hurricane such as Hurricane Ian can enter a structure through compromised roofing components without leaving visible blow-off. (Id.). He further testified that the interior moisture conditions observed at the Property were not consistent with slow, long-term leakage patterns, but instead were consistent with an acute water intrusion event associated with Hurricane Ian. (Crowson Aff. ¶ 9).

Mr. Crowson also expressly disagreed with Defendant's engineer's attribution of the interior damage to historical wear, tear, or ongoing leaks unrelated to the storm.

(Crowson Aff. ¶ 8). He stated that he did "not concur" with that conclusion and reaffirmed his opinion that Hurricane Ian was the cause of the interior moisture damage. (Id.).

Defendant's Motion nonetheless represents to the Court that Plaintiffs' expert "agreed" there was no storm-created opening and no hurricane-related roof involvement. (Doc. 56 at P. 11). That is not what Mr. Crowson said. His testimony distinguishes between the lack of visible membrane blow-off after repairs were completed and the presence of hurricane-caused water intrusion through the roofing system during Hurricane Ian. (Crowson Report at P. 3; Crowson Aff. ¶¶ 7). Defendant's characterization improperly strips his opinions of their context and substance.

Mr. Crowson further identified exterior hurricane-related damage to the Property, including damage to the electrical mast and gutter system, which he opined were caused by wind forces associated with Hurricane Ian. (Crowson Report at P. 5; Crowson Aff. ¶ 10). These exterior impacts further support his conclusion that the Property was subjected to significant hurricane-force winds affecting the building envelope. (Id.).

Defendant's assertion that "both engineers agree" is therefore incorrect. At a minimum, the record reflects competing expert opinions as to: (1) whether Hurricane

Ian caused storm-related vulnerabilities in the roofing system; (2) whether interior ceiling damage resulted from wind-driven rain associated with the hurricane; and (3) whether exterior components sustained wind damage during the storm. (Crowson Report at 5; Crowson Aff. ¶¶ 10; Stephens Report at 8). These disputes are quintessential issues of material fact that cannot be resolved on summary judgment.

Moreover, Defendant's contention that it "paid for the covered damages in full" is contradicted by the same engineering evidence. Even accepting Defendant's narrow framing of the roof observations, Mr. Crowson affirmatively opined that Hurricane Ian caused interior ceiling damage and exterior mast and gutter damage. (Crowson Report at 5; Crowson Aff. ¶¶ 10). Defendant did not issue full actual cash value payments for all damages corresponding to those opinions, as demonstrated by the competing estimates and payment records discussed infra. Defendant's mischaracterization of both the engineering testimony and the payment history underscores the existence of genuine disputes of material fact.

Defendant's attempt to isolate a single phrase from Mr. Crowson's report—referring to the absence of "apparent" roof membrane damage—ignores the context and substance of his opinions. Mr. Crowson clarified that the absence of visible membrane damage does not negate hurricane causation and does not contradict his conclusion that the interior moisture damage resulted from hurricane-related roof

damage. (Id. ¶¶ 7–9). Defendant's mischaracterization of this testimony underscores the existence of a factual dispute; it does not eliminate it.

By contrast, Defendant's engineer attributed the damages to wear and tear and denied the existence of a storm-created opening. (Stephens Engineering Report, Ex. 8). These competing opinions present a classic dispute of material fact that cannot be resolved on summary judgment. Jones v. UPS Ground Freight, 683 F.3d 1283, 1292 (11th Cir. 2012).

2. ***Plaintiffs' Engineer Establishes Hurricane-Related Interior Water Intrusion***

Defendant next argues that Plaintiffs lack competent evidence that interior water damage was caused by Hurricane Ian. Again, Defendant's argument is contradicted by the record.

Mr. Crowson opines, to a reasonable degree of engineering certainty, that the interior ceiling moisture and staining observed at the property were caused by wind-driven rain entering through the roofing surface during Hurricane Ian. (Crowson Aff. ¶¶ 5–6, 9–10, Ex. 3). He explains that the pattern, location, and timing of the moisture intrusion are consistent with hurricane-related roof damage and inconsistent with long-term wear, maintenance issues, or non-storm-related causes. (Id.).

Defendant's engineer reached the opposite conclusion. (Stephens Engineering Report, Ex. 8). Defendant's motion asks this Court to accept its engineer's conclusions while disregarding Plaintiffs' engineer's sworn opinions. That is not the function of summary judgment. Where experts disagree on causation, the issue must be resolved by the trier of fact. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

3. Plaintiffs' Engineering Evidence Also Supports Exterior and Component Damage

Defendant further argues that Plaintiffs lack competent evidence of hurricane-related damage to exterior components, including windows and related building elements. The record again reflects a dispute.

Mr. Crowson's opinions support hurricane-related damage to exterior components, including damage caused by wind and wind-borne debris. (Crowson Aff. Ex. 3). Defendant itself acknowledges wind-related damage to certain exterior components in its motion. (Defendant MSJ P. 12). The parties' disagreement centers not on whether Hurricane Ian caused damage, but on the scope and extent of that damage and whether Defendant's payment adequately addressed it.

Disputes regarding the scope of covered damage and the extent of repairs required are factual issues that cannot be resolved on summary judgment. See Gonzalez v. Citizens Prop. Ins. Corp., 273 So. 3d 1031, 1035 (Fla. 3d DCA 2019).

4. Defendant's "No Competent Evidence" Argument Impermissibly Seeks to Weigh Expert Testimony

At its core, Defendant's Section A argument asks this Court to weigh competing expert opinions, resolve credibility issues, and adopt Defendant's version of disputed facts. That is improper at the summary judgment stage.

Plaintiffs have submitted competent, sworn expert testimony establishing hurricane causation for the damages claimed. Defendant has submitted contrary expert testimony. The existence of competing expert opinions creates genuine disputes of material fact as a matter of law. Jones, 683 F.3d at 1292.

Defendant's assertion that Plaintiffs "lack competent evidence" is therefore incorrect. Plaintiffs' evidence may ultimately be accepted or rejected by the trier of fact, but it is more than sufficient to defeat summary judgment.

5. ***Defendant asserts that it paid all covered damages in full and that Plaintiffs lack evidence of unpaid loss. (Doc. 56).***

That assertion is contradicted by the record. Plaintiffs' engineering evidence identifies multiple categories of hurricane-related damage that Defendant either denied outright or failed to pay in full, and Plaintiffs' construction estimate prepared by Adam Mrozek quantifies the actual cash value of those unpaid damages. When the engineering opinions, payment records, and line-item estimate are read together, they establish a genuine dispute of material fact as to whether Defendant breached

the policy by failing to pay the actual cash value of covered damages.

As set forth above, Plaintiffs' engineer, Bradley Crowson, P.E., opined to a reasonable degree of engineering certainty that Hurricane Ian caused wind-driven rain intrusion through the roofing system, resulting in interior ceiling moisture damage, and that the Property also sustained exterior wind-related damage, including to the electrical mast and gutter system. (Crowson Report at P. 5; Crowson Aff. ¶¶ 10). These opinions directly contradict Defendant's assertion that the loss was limited to the narrow scope reflected in its estimate. (Doc. 56 at P. 8).

Mr. Mrozek's estimate quantifies the actual cash value of the specific categories of damage identified by Mr. Crowson and not paid by Defendant. (Mrozek Estimate, Ex. 6). With respect to exterior wind damage, Mr. Mrozek included line items for gutter and downspout damage caused by hurricane winds, including Line Item 2 (gutter removal and replacement – $1,864.40), Line Item 3 (additional gutter components – $1,594.13), and Line Item 4 (downspouts – $1,217.56). (Temporary Ex. I, Lines 2–4). These line items correspond directly to Mr. Crowson's opinion that the gutter system sustained wind-related damage during Hurricane Ian. (Crowson Report; Crowson Aff. Exs. 2 & 3).

With respect to electrical mast and service components, Mr. Mrozek included Line Item 10 (meter mat – $1,297.93), Line Item 11 (meter mast – $506.64), and Line Item 12 (meter base – $658.05). (Temporary Ex. I, Lines 10–12). These line

items quantify the actual cash value of the exterior electrical damage that Mr. Crowson identified as consistent with hurricane wind forces acting on the building envelope. (Crowson Report; Crowson Aff. Exs. 2 & 3).

With respect to interior damage caused by wind-driven rain, Mr. Mrozek included Line Items 13 through 23, which account for damaged windows, ceiling tiles, and associated interior finishes, totaling $24,320.38 in actual cash value. (Temporary Ex. I, Lines 13–23). These items directly correspond to Mr. Crowson's opinion that the interior ceiling moisture staining was caused by wind-driven rain entering through the roofing system during Hurricane Ian. (Crowson Report; Crowson Aff. Exs. 2 & 3).

Mr. Mrozek further included Line Items 24 through 31 for the sales floor ceiling system, including ceiling tiles, insulation, and stain-blocking treatment necessitated by hurricane-related moisture intrusion, totaling $14,158.83 in actual cash value. (Temporary Ex. I, Lines 24–31). These repairs address the same ceiling moisture conditions Mr. Crowson attributed to Hurricane Ian rather than historical leakage. (Crowson Report; Crowson Aff. Exs. 2 & 3).

Finally, Mr. Mrozek included Line Items 32 through 34 for content manipulation, totaling $5,480.80 in actual cash value, representing the work required to access and repair the hurricane-damaged ceiling system. (Temporary Ex. I, Lines 32–34). These

costs are a necessary component of the covered interior repairs identified by Mr. Crowson. (Crowson Report Ex. 2).

The total actual cash value of the damages quantified in Mr. Mrozek's estimate that correspond to Mr. Crowson's hurricane-related opinions equals $57,914.40. (Ex. 6). Defendant's own estimate reflects an ACV (and RCV) of $21,314.45, with $0.00 depreciation, and a net payment of $2,314.49 after application of the $19,000.00 deductible. (Defendant Estimate, Temporary Ex. F). Defendant also paid $6,815.68 for interior carpet damage, which Plaintiffs fully credit and do not seek again. (Id.).

After crediting Defendant's net payment, the previously paid carpet amount, and the deductible, the record reflects $36,599.91 in unpaid actual cash value damages for covered hurricane-related loss supported by Plaintiffs' engineering and construction evidence. (Exs. 2 & 6).

Defendant does not dispute that it issued no actual cash value payment for the majority of these line items. Instead, Defendant asks the Court to disregard Plaintiffs' expert evidence and accept Defendant's causation position as a matter of law. (Doc. 56 at p. 14). That is not permitted at the summary judgment stage. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

Where, as here, Plaintiffs present competent engineering testimony establishing hurricane causation and a construction estimate that ties specific unpaid line items to that testimony, summary judgment is improper. Trinidad v. Fla. Peninsula Ins. Co., 121 So. 3d 433, 438 (Fla. 2013). At a minimum, the record establishes genuine disputes of material fact as to coverage, breach, and damages, requiring denial of Defendant's Motion.

6. Because Causation and Coverage Are Disputed, Summary Judgment Must Be Denied

Because the record contains competing expert opinions regarding whether Hurricane Ian caused damage to the roofing surface, resulting in interior water intrusion and related damage, summary judgment is inappropriate. These disputes go directly to coverage under the policy and to the scope of damages owed.

Defendant cannot eliminate these disputes by selectively quoting Plaintiffs' expert or by characterizing factual disagreements as legal deficiencies. When the evidence is viewed in the light most favorable to Plaintiffs, as required, Defendant has failed to meet its burden to show the absence of any genuine issue of material fact.

VI. PLAINTIFFS' ACV EVIDENCE CREATES A JURY ISSUE

"An insured is entitled to dispute whether the insurer paid the correct ACV." Siegel v. Tower Hill Signature Ins. Co., 255 So.3d 974 (Fla. 3d DCA 2017).

"Section 627.7011(3)(a) places the initial burden on the insurer to show it paid at least the ACV of the insured loss. Once the insurer provides an ACV estimate and payment, the insured may demonstrate that the payment did not reflect the fully insured loss." Homeowners Choice Prop. & Cas. Ins. Co. v. Clark, 410 So.3d 99, 111–12 (Fla. 1st DCA 2025). "Where competing estimates exist, summary judgment is improper." Goldberg v. Universal Prop. & Cas. Ins. Co., 302 So.3d 919, 925 (Fla. 4th DCA 2020). In the instant case, Plaintiffs have submitted a competing ACV estimate.

VII. CONCLUSION

Defendant's Motion for Summary Judgment is premised on a mischaracterization of both the record and the nature of the breaches at issue. Before this lawsuit was filed, Defendant committed two independent breaches of the insurance contract. First, Defendant partially denied coverage for multiple categories of hurricane-related damage identified in Plaintiffs' estimate, taking a causation and coverage position that excluded areas of damage for which Plaintiffs presented evidence of storm-related loss. Second, even as to the categories of damage for which Defendant did open coverage, Defendant underpaid the actual cash value of the loss by limiting its scope and valuation and issuing payment that did not reflect the full ACV owed under the policy. For the categories of damage Defendant denied,

Defendant issued no actual cash value payment at all. Both breaches existed at the time this action was filed.

The record further reflects genuine disputes of material fact as to causation and coverage. Defendant's assertion that the engineering evidence is unanimous is contradicted by the sworn opinions of Plaintiffs' engineer, who attributed interior ceiling damage and exterior component damage to wind-driven rain and wind forces associated with Hurricane Ian and expressly rejected Defendant's wear-and-tear theory. Defendant's attempt to portray Plaintiffs' expert opinions as aligned with its own causation determination relies on a selective and misleading reading of the record.

Plaintiffs have also presented competent evidence demonstrating that Defendant's payment failed to satisfy its obligation to pay the actual cash value of the covered loss. Plaintiffs' construction estimate quantifies the actual cash value of hurricane-related damage supported by engineering evidence and shows that Defendant underpaid even the damages it acknowledged were covered, while issuing no payment for other covered damages it denied. When Defendant's payments and the policy deductible are properly credited, the record reflects a substantial unpaid actual cash value loss. At a minimum, this evidence creates a genuine dispute of material fact as to breach and damages.

Summary judgment is not a mechanism for resolving disputed expert opinions, narrowing coverage through selective readings of the record, or insulating an insurer from liability where both coverage and valuation are genuinely contested. Because Defendant has failed to demonstrate the absence of genuine issues of material fact, and because Plaintiffs have presented competent evidence supporting both breaches of the policy, Defendant's Motion for Summary Judgment should be denied in its entirety.

WHEREFORE, Defendant has failed to meet its burden under Rule 56, and Plaintiffs have demonstrated genuine disputes of material fact that must be resolved by a jury. Plaintiffs respectfully request that the Court DENY Defendant's Motion for Summary Judgment (Doc. 56) in its entirety, and for such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2025, I electronically filed the foregoing Motion for Protective Order with the Clerk of Court using the CM/ECF system, which will send notice of such filing to all counsel of record.

COLUCCI LAW GROUP, PLLC

/s/Candice Colucci, Esq.
Candice Colucci, Esq.; FBN 120514