

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:25-cv-01009-REB-KAS

BWB INVESTMENT COMPANY, LLC

Plaintiff,

v.

SCOTTSDALE INSURANCE COMPANY,

Defendant.

**DEFENDANT SCOTTSDALE INSURANCE COMPANY'S
CROSS MOTION FOR SUMMARY JUDGMENT**

Defendant Scottsdale Insurance Company (“Scottsdale”), by and through its attorneys, hereby submits the following Cross Motion for Summary Judgment, and in support thereof, states as follows:

I. INTRODUCTION

This first party property bad faith lawsuit arises from the theft of copper at Plaintiff’s warehouse on November 4, 2024. By Plaintiff’s own account, the burglars had a singular purpose and “knew exactly what they were doing. They knew exactly where to go to find . . . the most amount of copper.” **Ex. A**, November 7, 2024 Call Transcript (“Call Transcript”), at 13:9–11.¹ As a result, “anything that you can imagine that had copper in it . . . is gone.” *Id.* at 10:6–7. Scottsdale denied coverage for the stolen copper, along

¹ Exhibit A is a transcript of a November 7, 2024 call between Scottsdale’s adjuster and Bob Brown, who Plaintiff describes as one of its members. See Complaint, Doc. 4, ¶ 9.

with the building damage incurred to effectuate the theft based on the Policy's Theft Limitation which states that Scottsdale "will not pay for loss or damage caused by or resulting from theft."

As a matter of law, Scottsdale's interpretation of the Policy and subsequent coverage decision were both correct and reasonable. Because there is no coverage, there can be no bad faith. Accordingly, the Court should grant summary judgment on all claims in Scottsdale's favor.

II. UNDISPUTED FACTS

1. Scottsdale issued an insurance policy to Plaintiff, Policy No. CPS8080139, with effective dates of October 1, 2024 to October 1, 2025 (the "Policy") for a commercial warehouse located at 4595 E. 46th Avenue, Denver, Colorado 80216 (the "Property"). See **Ex. B**, Policy; see *also* Complaint, Doc. 4, ¶¶ 5–6.

2. During the night of approximately November 4, 2024, unknown burglars damaged Plaintiff's warehouse (the "Incident"). See Complaint, Doc. 4, ¶ 7.

3. During the Incident, the burglars broke into the Property's electrical panels, drywall, ceilings, conduits, wire coverings, drinking fountains, air conditioners, fuse boxes, and other fixtures (both interior and exterior). See *id.*

4. The burglars severed substantial amounts of copper from the Property, rendering the Property's electrical, HVAC, mechanical, and plumbing systems inoperable. *Id.*

5. The burglars stole substantially all of the severed copper. **Ex. A**, Call Transcript, at 7:16–17, 8:8–10.

6. The Policy covers “direct physical loss or damage to Covered Property . . . caused by or resulting from any Covered Cause of Loss,” including Vandalism, meaning “willful and malicious damage to, or destruction of” the Property. **Ex. B**, Policy, at pp. 91, 119. The Policy further states: “We will not pay for loss or damage caused by or resulting from theft, except for building damage caused by the breaking in or exiting of burglars.” *Id.* at p. 119.

7. On November 7, 2024, Scottsdale’s adjuster spoke with Bob Brown, Plaintiff’s Managing Partner. **Ex. A**, Call Transcript, at 2:10–20. During the call, Mr. Brown, referring to the Incident as “the Tuesday night theft”,² said the burglars “stole every lick of copper in the building”. *Id.* at 7:16–17. To do so, the burglars “tore through ceilings to try to get things. They tore through walls to get -- to get some of the copper.” *Id.* at 8:8–10. As a result, “anything that you can imagine that had copper in it is -- it just is gone”. *Id.* at 10:6–7.

8. Mr. Brown was not concerned about the burglars coming back because “there’s really nothing left to take.” *Id.* at 9:6–7, 11:16–17.

9. Scottsdale, by letter dated November 11, 2024, denied coverage for the claim based on the Policy language: “We will not pay for loss or damage caused by or resulting from theft, except for building damage caused by the breaking in or exiting of burglars.” **Ex. B**, Policy, at 119; **Ex. C**, Scottsdale Denial Letter, at 1.

10. By letter dated December 27, 2024, Plaintiff, through counsel, appealed

²There was some initial confusion on the call regarding when the Incident occurred, which Plaintiff now alleges took place on Monday, November 4, 2024. See **Ex. A**, Call Transcript, at 4:24–8:4; Doc. 28, Undisputed Facts, ¶ 1.

Scottsdale's coverage decision. See **Ex. D**, Appeal Letter.

11. On January 8, 2025, Scottsdale maintained its "no coverage" position.

Ex. E, Scottsdale Denial Email.

12. Plaintiff's insurance broker, USI Insurance Services, LLC, also advised Plaintiff it was "declining to reimburse you for this loss" because "[t]heft was not included as one of the covered perils under the policy you purchased." **Exhibit F**, USI Email.

13. Plaintiff did not respond and filed suit on March 4, 2025. Complaint, Doc. 4. Plaintiff asserts three causes of action against Scottsdale: (1) breach of contract, (2) bad faith breach of insurance contract, and (3) violation of C.R.S. §§ 10-3-1115 and -1116.

III. LEGAL STANDARDS

The court may grant summary judgment if "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). A fact is material if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The standard for cross-motions for summary judgment applies differently depending on whether the movant bears the burden of persuasion at trial. "In attempting to meet this standard, a movant that does not bear the ultimate burden of persuasion at trial does not need to disprove the other party's claim; rather, the movant need simply point the Court to a lack of evidence for the other party on an essential element of that party's claim." *Palm v. Esurance Prop. & Cas. Ins. Co.*, No. 20-cv-02838-NYW-STV, 2023 WL 2503511, 2023 U.S. Dist. LEXIS 42820, at *10 (D. Colo. Mar. 14, 2023) (citing *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 671 (10th Cir. 1998)).

“Under Colorado law³, the interpretation of an insurance policy, like any written contract, presents a question of law and, therefore, is appropriate for summary judgment.” *Nat’l Union Fire Ins. Co. of Pittsburgh, PA v. Fed. Ins. Co.*, 213 F. Supp. 3d 1333, 1340 (D. Colo. 2016) (footnote added, quotations omitted). A court should give words their plain and ordinary meaning, unless a contrary intent is evidenced within the policy itself. *Lux v. Great N. Ins. Co.*, No. 12-cv-02632-REB-KMT, 2013 WL 6076157, 2013 U.S. Dist. LEXIS 164973, at *15 (D. Colo. Nov. 18, 2013). If a term or provision is ambiguous, meaning that it “is subject to more than one reasonable interpretation,” courts construe that term of provision against an insurer. *Id.* (citation omitted). If a limitation or exclusion in an insurance contract is unambiguous, then that limitation or exclusion must be enforced. *Id.* at *15–16 (citations omitted).

A court should not go out of its way to search for ambiguity where the tools of interpretation do not admit of one. *See Kane v. Royal Ins. Co.*, 768 P.2d 678, 683 (Colo. 1989) (“[C]ourts are not at liberty to raise doubts where there are none or to make a new contract between the insured and the insurer.”) (citation omitted); *Martinez v. Hawkeye-Security Ins. Co.*, 576 P.2d 1017, 1019 (Colo. 1978) (“[C]ourts will not force an ambiguity in order to resolve it against an insurer.”) (citation omitted). “Mere disagreement between the parties about the meaning of a provision does not create ambiguity.” *Snipes v. Am. Family Mut. Ins. Co.*, 134 P.3d 556, 558 (Colo. App. 2006). Moreover, “the potential for more than one interpretation does not, in itself, create ambiguity.” *Rocky Mt. HMO, Inc.*

³ Because Plaintiff’s claims in this diversity action all arise under Colorado law, Colorado law applies under the *Erie* doctrine. *James River Ins. Co. v. Rapid Funding, LLC*, 658 F.3d 1207, 1217 (10th Cir. 2011); 28 U.S.C. § 1652.

v. Colo. Dep't of Health Care Policy & Fin., 54 P.3d 913, 919 (Colo. App. 2001) (citation omitted). Rather, a court's construction "must be fair, natural, and reasonable rather than strained and strictly technical." *Massingill v. State Farm Mut. Auto. Ins. Co.*, 176 P.3d 816, 825 (Colo. App. 2007) (citation omitted).

IV. ARGUMENT

A. Scottsdale is entitled to judgment as a matter of law on Plaintiff's breach of contract claim because the Policy unambiguously excludes coverage for loss or damage arising from theft.

To prove a breach of contract, Plaintiff must show: "(1) the existence of a contract; (2) performance by the plaintiff or some justification for nonperformance; (3) failure to perform the contract by the defendant; and (4) resulting damages to the plaintiff." *Williams v. RGA Home Health Servs.*, 713 F. App'x 732, 733 (10th Cir. 2017). Plaintiff has the burden to show the loss falls within the coverage grant of the Insuring Agreement, while Scottsdale has the burden to prove a particular loss falls within an exclusion. *Leprino Foods Co. v. Factory Mut. Ins. Co.*, 453 F.3d 1281, 1287 (10th Cir. 2006). Here, Plaintiff cannot establish this essential element of its claim because the Policy unambiguously precludes coverage for the loss due to theft of copper and damage caused in furtherance thereof.

1. There is no coverage for the stolen copper and resulting building damage.

The Policy does not provide coverage for loss or damage caused by or resulting from theft, other than the limited damage caused by burglars in the act of breaking into or exiting the building. The Policy defines "Covered Causes of Loss" to include:

Vandalism, meaning willful and malicious damage to, or destruction of, the described property. We will not pay for loss or damage caused by or resulting from theft, except for building damage caused by the breaking in

or exiting of burglars.

Ex. B, Policy, at 119. This particular provision breaks down into three components: (1) a Vandalism Clause providing coverage for willful and malicious damage to covered property; (2) a Theft Limitation removing coverage for loss or damage caused by or resulting from theft; and (3) an Ingress/Egress Exception restoring coverage for building damage caused by the breaking in or exiting of burglars.

Regarding the copper itself, Plaintiff admits “substantially all” of the copper severed from its property was stolen. Doc. 28, Undisputed Facts, ¶ 4. Accordingly, it falls under the Theft Limitation. The Theft Limitation’s text also makes clear it eliminates coverage for building damage arising out of the theft by specifying that Scottsdale “will not pay for loss **or damage** caused by or resulting from theft.” **Ex. B**, Policy, at 119 (emphasis added). The fact “damage” is specifically mentioned in this Limitation shows the Policy’s intent to exclude not just loss, but also “damage caused by or resulting from theft.” And in order for the use of the term “damage” to have any meaning, the Theft Limitation must also reach building damage caused by burglars’ efforts to access and remove property that they eventually stole.⁴ *Goodman v. Heritage Builders, Inc.*, 390 P.3d 398, 401 (Colo. 2017) (“Courts should reject interpretations that render words or phrases superfluous.”) (cleaned up); *Copper Mountain, Inc. v. Indus. Sys., Inc.*, 208 P.3d 692, 700 (Colo. 2009) (courts must “choose a construction of the contract that harmonizes provisions instead of rendering them superfluous”) (citation omitted). Thus, the Policy’s plain text makes clear

⁴ Scottsdale has yet to come up with an example of damage caused by or resulting from theft that would not qualify as vandalism under Plaintiff’s interpretation.

there is no coverage for either the value of stolen copper or the building damage resulting from the thieves' attempts to access, sever, and abscond with the copper.

Context confirms Scottsdale's determination there is no coverage for the building damage Plaintiff claims. The Theft Limitation itself has an exception in which the Policy restores coverage for "**building damage** caused by the breaking in or exiting of burglars."⁵ **Ex. B**, Policy, at 119 (emphasis added). This Ingress/Egress Exception serves no purpose unless building damage occurring during the commission of a theft falls within the Theft Limitation. As one court explained, "[i]f there was coverage for all willful malicious building damage done in the course of carrying out theft, then there would be no need to specify that a certain subset of such damage (entering and exiting) was covered despite the theft exclusion." *Sjp Props., Inc. v. Mount Vernon Fire Ins. Co.*, No. 4:14-cv-694-JAR, 2015 WL 4524337, 2015 U.S. Dist. LEXIS 97216, at *18–19 (E.D. Mo. July 27, 2015); *see also Wausau Bus. Ins. Co. v. US Motels Mgmt.*, 341 F. Supp. 2d 1180, 1183 (D. Colo. 2004) ("The provisions of the policy must be construed together as a whole, not in isolation.") (citation omitted).

It is uncontroverted that the thieves stole the copper from the Property and, therefore, Scottsdale property denied coverage under the plain language of the Policy.

⁵ Scottsdale offered coverage for "building damage caused by the breaking in or exiting of burglars" in its denial letter—*see Ex. C*, Scottsdale Denial Letter, at 1; *see also Ex. E*, Scottsdale Denial Email—and asked Plaintiff to provide evidence detailing damages caused by the breaking in or exiting of burglars, but Plaintiff never provided this information.

2. Scottsdale’s interpretation accords with Senior Judge Kane’s construction of analogous language on materially similar facts.

Scottsdale has located only one case in Colorado addressing whether building damage incurred in furtherance of theft is covered as vandalism or excluded as theft. Like this case, in *Summit Bank & Trust v. American Modern Home Insurance Co.* (“*Summit Bank*”), the insurer “denied coverage for amounts requested by [the insured] which appeared to its investigators to be the result of theft or directly caused by attempts to steal and remove items from the Property.” No. 12-cv-02395-JLK, 2014 WL 3512770, 2014 U.S. Dist. LEXIS 95979, at *7 (D. Colo. July 15, 2014). And, as here, the parties “clash[ed] over whether the theft/burglary exclusion applies only to the value of the property stolen or if it also extends to damage incurred to effectuate the theft.” *Id.* at *8.

There, the policy provided coverage for:

8. Vandalism or Malicious Mischief, meaning only the willful and malicious damage to or destruction of the property covered. This company shall not be liable for loss:

b) by pilferage, theft, burglary or larceny, except his Company shall be liable for willful damage to the building(s) covered caused by burglars in gaining entrance to or exit from the building(s) or any part of the building(s).

Id. at *7–8. Judge Kane rejected the insured’s contention that this language was ambiguous as to whether building damage incurred in furtherance of a theft fell within the theft limitation. He used an apt metaphor to demonstrate why the insured’s position and interpretation was “fatally flawed” and “strained, unreasonable, and anything but ‘plain and ordinary’”:

Imagine for a moment that an office inside the Property had a wall-safe where a former Hewlett Packard executive stored his luxury watches.

Metaphorically, [the insured's] argument would conclude that if thieves ripped open and damaged the safe to steal the watches, the watches would be excluded from coverage but damage to the safe would be covered because it is "ambiguous" regarding whether such damage is a "loss due to theft." [The insurer] argues that because the damage was done to further the theft, it was loss by theft and therefore excluded. No ambiguity, no problem. Here, because the safe would never have been damaged but to steal the watches and it was not damaged for the thieves merely to have their jollies, the damage to the safe was not vandalism.

Id. at *8–9. Judge Kane specifically highlighted that if the court accepted the insured's interpretation, the ingress/egress exception "would be rendered meaningless in violation of Colorado law." *Id.* at *11. Accordingly, "the only reasonable interpretation of the [theft limitation] is that collateral damage caused by burglars during the course of their theft is not covered, except for any collateral damage caused by entering or exiting the property." *Id.*

While the policy language in *Summit Bank* differs in certain respects from the pertinent language here, in essence, the two policies are functionally the same. Both policies cover loss from vandalism, remove coverage for loss arising from the wrongful taking of property, and include an ingress/egress exception. It is precisely because these policies—despite their slightly different language—mirror one another and their components fit together in the same manner, that Judge Kane's reasoning and analysis is persuasive and should be followed here. Plaintiff cannot escape the fact its interpretation, like the insured's in *Summit Bank*, renders the ingress/egress exception superfluous. Judge Kane found this highly significant, stating "[t]his phrase resolves any ambiguity as to whether 'loss caused by theft' includes collateral damage caused by theft." *Id.* at *10. The foregoing reasons mandate the same result here.

3. The overwhelming weight of legal authority supports Scottsdale's interpretation of the Policy.

The majority of cases interpreting the same policy language as here have reached the same conclusion.⁶ In *Certain Underwriters at Lloyds London v. Law*, 570 F.3d 574 (5th Cir. 2009), the Fifth Circuit Court of Appeals considered identical policy language in the context of copper theft. The court explained the interplay between the vandalism clause, theft limitation, and ingress/egress exception:

The policy provisions at issue, viz., the vandalism coverage, the theft exclusion, and the ingress/egress exception, indisputedly turn on the purpose for which the damage at issue is done: (1) Damage done for no purpose other than to destroy property for destruction's sake is "vandalism;" (2) incidental damage done in furtherance of thievery falls within the narrower category of damage resulting from theft; (3) damage to the insured building done by burglars entering or leaving the building that they attempt to burglarize falls into the even narrower ingress/egress exception.

Id. at 578–79. Notably, this interpretation is indistinguishable from Judge Kane's in *Summit Bank*. As another court held, "[i]f the motivation and end result is that of theft and the claimed loss is 'caused by or result[s] from [that] theft, there is no coverage':

⁶ The following cases considered identical or nearly identical language and arrived at the same interpretation. *Mercedes Zee Corp., LLC v. Seneca Ins. Co.*, 151 F. Supp. 3d 255, 259–61 (D. Conn. 2015); *Neighbors Credit Union v. Integon Nat'l Ins. Co.*, No. 4:21-cv-1477-RWS, 2022 WL 16649506, 2022 U.S. Dist. LEXIS 200478, at *8–17 (E.D. Mo. Nov. 3, 2022); *Sjp Props.*, 2015 U.S. Dist. LEXIS 97216, at *12–19; *Vita Farms, LLC v. Scottsdale Ins. Co.*, No. 14-cv-20018-UU, 2014 WL 11350197, 2014 U.S. Dist. LEXIS 185821, at *5–9 (S.D. Fla. Sep. 29, 2014); *Riverbend Capital, LLC v. Essex Ins. Co.*, No. 09-3599, 2010 WL 3942907, 2010 U.S. Dist. LEXIS 106281, at *8–20 (E.D. La. Oct. 5, 2010); *Essex Ins. Co. v. Eldridge Land, L.L.C.*, 442 S.W.3d 366, 370–74 (Tex. App. 2010); *Nautilus Ins. Co. v. Steinberg*, 316 S.W.3d 752, 754–57 (Tex. App. 2010); *Gen. Star Indem. Co. v. Zelonker*, 769 So. 2d 1093, 1094–95 (Fla. Dist. Ct. App. 2000); see also *Bitra Trading, Inc. v. Nationwide Mut. Ins. Co.*, No. 13-cv-1548-JM-WVG, 2015 WL 433557, 2015 U.S. Dist. LEXIS 13427, at *9–17 (S.D. Cal. Feb. 3, 2015); *Pac. Indem. Co. v. N. A.*, 172 S.E.2d 192, 193–94 (Ga. App. 1969).

Our holding is bolstered by the definition of vandalism found in the policy “willful and malicious damage to, or destruction of, the described property.” This definition refers to the type of damage caused by vandals as that concept is ordinarily understood, i.e., damaging something simply for the sake of damaging it. The concept of theft is entirely different. A thief enters a building in order to steal something; certainly a thief’s primary focus is not the malicious defacing, destroying, or damaging of property.

Smith v. Shelby Ins. Co. of the Shelby Ins. Grp., 936 S.W.2d 261, 265 (Tenn. App. 1996).

The damage to the warehouse occurred because the thieves wanted to get the copper. Mr. Brown’s own statements demonstrate the absence of a genuine issue of material fact on that point. See Undisputed Facts, ¶ 7. The Policy language is unambiguous and makes clear that the parties chose to exclude from coverage the risk of damage to the premises caused by or resulting from theft, which is precisely the damage that occurred in this case. See *also* **Ex. F**, USI Email (Plaintiff’s broker explaining to Plaintiff that “[t]heft was not included as one of the covered perils under the policy you purchased.”). Accordingly, this Court should grant summary judgment in Scottsdale’s favor on the breach of contract claim.

B. Because there is no coverage, summary judgment should also be granted for Scottsdale on Plaintiff’s bad faith claims.

Summary judgment should also be granted for Scottsdale on Plaintiff’s Second Claim for Relief for common law bad faith and Third Claim for Relief for statutory violation because there are no covered benefits to which Plaintiff is entitled under the Policy. If Scottsdale did not deny payment of any covered benefits, it could not have *unreasonably* denied payment of those benefits. “The issue of coverage is a central predicate to any claim of bad faith breach of the insurance contract.” *Cary v. United of Omaha Life Ins. Co.*, 91 P.3d 425, 427 (Colo. App. 2003), *rev’d other grounds*, 108 P.3d 288, 290 (Colo.

2005). Where there has been no breach of the insurance contract, there can be no claim for “bad faith” breach of contract. See *Lincoln Gen. Ins. Co. v. Bailey*, 224 P.3d 336, 342 (Colo. App. 2009) (where there was no breach of contract, bad faith claim was properly dismissed).

Accordingly, where a policy provides no coverage and the insured is not entitled to recover benefits, the insurer cannot be liable for unreasonable denial of or bad faith refusal to pay the claim and therefore judgment is appropriate on any bad faith claim arising from failure to pay benefits not owed. See *MarkWest Hydrocarbon, Inc. v. Liberty Mut. Ins. Co.*, 558 F.3d 1184, 1193 (10th Cir. 2009) (“It is settled law in Colorado that a bad faith claim must fail if, as is the case here, coverage was properly denied and the plaintiff’s only claimed damages flowed from the denial of coverage.”).

The absence of coverage also requires judgment for Scottsdale on Plaintiff’s claim under § 10-3-1116(1). Because Plaintiff is not entitled to “covered benefits” under either Policy, Scottsdale cannot be liable for unreasonably denying payment of benefits it does not owe. See *Jordan v. Safeco Ins. Co.*, 348 P.3d 443, 451 (Colo. App. 2013) (if no “covered benefits” are owed because there is no coverage, there can be no claim for “two times the covered benefits” under § 10-3-1116); see also *Sentry Ins. Mut. Co. v. St. Claire’s Organics, Inc.*, No. 11-cv-00119-REB-BNB, 2012 WL 3590875, 2012 U.S. Dist. LEXIS 117802, at *9–10 (D. Colo. Aug. 20, 2012). Accordingly, this Court should grant summary judgment in favor of Scottsdale on the bad faith claims. See *MarkWest*, 558 F.3d at 1193.

C. Even if the Court rejects Scottsdale’s interpretation, Plaintiff’s bad faith claims fail because Scottsdale’s interpretation was reasonable.

Both common law and statutory claims for bad faith require Plaintiff to show Scottsdale’s conduct was unreasonable. *Trujillo v. State Farm Mut. Auto. Ins. Co.*, No. 18-cv-0410-WJM-NRN, 2019 WL 3996882, 2019 U.S. Dist. LEXIS 143724, at *20 (D. Colo. Aug. 23, 2019). Even if the Court disagrees with Scottsdale’s interpretation, the undisputed facts show there was a reasonable basis for Scottsdale’s coverage determination, and, therefore, the extra-contractual claims must be dismissed.

1. Plaintiff’s statutory bad faith claim must be dismissed because Scottsdale did not act unreasonably.

In a claim for statutory bad faith, the plaintiff must show that the carrier was not only wrong, but unreasonably so. *El Dueno, LLC v. Mid-Century Ins. Co.*, No. 21-cv-01532-DDD-JPO, 2024 WL 1236245, 2024 U.S. Dist. LEXIS 52193, at *6 (D. Colo. Feb. 23, 2024). “[A] plaintiff must prove that the insurer unreasonably delayed or denied payment of the claim.” *Foster v. USAA Gen. Idem. Co.*, No. 22-cv-00378-PAB-MDB, 2022 WL 17583423, 2022 U.S. Dist. LEXIS 223509, at *6 (D. Colo. Dec. 12, 2022). A delay is unreasonable “if the insurer delayed or denied authorizing payment of a covered benefit without a reasonable basis for that action.” *Id.* (citing C.R.S. § 10-3-1115(2)). “The determination of whether an insurer has breached its duties to the insured is one of reasonableness under the circumstances.” *Id.* “The burden to establish unreasonableness lies with plaintiff.” *Id.* at *7. “When there are no genuine issues of material fact, reasonableness may be decided as a matter of law.” *Ayala v. State Farm Mut. Auto. Ins. Co.*, 628 F. Supp 3d 1075, 1079 (D. Colo. 2022).

In interpreting Colorado law, the Tenth Circuit has held that taking a reasonable position on a legal question, even if ultimately incorrect, cannot be evidence of bad faith. *Anderson v. State Farm Mut. Auto. Ins. Co.*, 416 F.3d 1143, 1148 (10th Cir. 2005) (“State Farm’s explanation of UM/UIM coverage was based upon a reasonable, albeit mistaken, belief that under the law owned-but-not-insured exclusions in insurance policies providing UM/UIM coverage were valid.”). “An insurer does not act in bad faith where it legitimately disputes the interpretation of an insurance policy.” *Avalon Condo. Ass’n v. Secura Ins.*, No. 14-cv-00200-CMA-KMT, 2015 WL 5655528, 2015 U.S. Dist. LEXIS 129373, at *14 (D. Colo. Sept. 25, 2015) (“[M]ere disagreement of this sort is insufficient for Plaintiff to sustain its bad faith claim”).

Further, an insurer who invokes a “reasonable interpretation to deny coverage” even in the face of a competing interpretation, necessarily has a “reasonable basis” for its denial. *Avalon Condo. Ass’n*, 2015 U.S. Dist. LEXIS 129373, at *14)). “In Colorado, acting without a reasonable basis has been construed to mean pursuing a groundless position that is not supported by credible evidence.” *Cooper v. Shelter Gen. Ins. Co.*, 653 F. Supp. 3d 873, 878 (D. Colo. 2023) (citing *Masters v. SAFECO Ins. Co. of Am.*, No. 20-cv-00631-PAB-NRN, 2021 WL 4326269, 2021 U.S. Dist. LEXIS 181830, at *5 (D. Colo. Sept. 23, 2021)). The reasonableness of Scottsdale’s interpretation—and thus its coverage determination—is evidenced by the numerous court decisions cited *supra* interpreting identical policy language and arriving at the same reading. Therefore, Scottsdale has maintained an evidence-based position on the interpretation of the Policy and reached a reasonable conclusion based on that evidence.

Even if the Court is inclined to reach a different reading of the Policy, the caselaw nevertheless evinces—at the very least—a healthy debate as to the proper interpretation of the policy language at issue in this case. Thus, even if Scottsdale’s interpretation of the Policy is incorrect, this is “insufficient to state a claim for bad faith.” See *Cook v. Jackson Nat’l Life Ins. Co.*, 885 F. Supp. 221, 226 (D. Colo. 1995) (Kane, J.) (“[D]isagreement over the terms of a contract . . . is insufficient to state a claim for bad faith.”). Scottsdale relied on the unambiguous language of the Policy and informed Plaintiff of its reasoning. Accordingly, summary judgment on the statutory violation claim is proper.

2. The common law bad faith claim likewise fails.

“A common law bad faith claim is a distinct cause of action from the statutory bad faith claim.” *Foster*, 2022 U.S. Dist. LEXIS 223509, at *7. In addition to the unreasonableness requirement, the common law claim requires that Plaintiff show the insurer “acted with knowledge or reckless disregard of its unreasonableness.” *Trujillo*, 2019 U.S. Dist. LEXIS 143724, at *20. “An insurance company recklessly disregards the unreasonableness of its conduct when there is either no reasonable basis for the denial, or a reckless indifference to the facts or to the proofs submitted by the insured.” *Coralee Traurig v. Owners Ins. Co.*, No. 20-cv-01489-CMA-SKC, 2022 WL 2287507, 2022 U.S. Dist. LEXIS 112680, at *9 (D. Colo. Feb. 17, 2022). “Under common law, finding that an insurer’s justification for denying or delaying payment of a claim is ‘fairly debatable’ typically weighs against finding that an insurer acted unreasonably.” *Foster*, 2022 U.S. Dist. LEXIS 223509, at *7 (citing *Sanderson v. Am. Family Mut. Ins. Co.*, 251 P.3d 1213,

1218 (Colo. App. 2010)). A common law bad faith claim “imposes a more exacting standard of proof than a statutory claim.” *Cooper*, 653 F. Supp 3d at 878.

The issue of bad faith is not whether an insurer is “right” or “wrong” in its conclusions or evaluations. *Wheeler v. Reese*, 835 P.2d 572, 578–79 (Colo. App. 1992). To hold otherwise would involve “twenty-twenty hindsight.” *Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1219 (Colo. App. 2010). Even a reasonable, albeit mistaken, belief that a claim is not compensable is not bad faith. *Pham v. State Farm Mut. Auto. Ins. Co.*, 70 P.3d 567, 572 (Colo. App. 2003); *Zolman*, 261 P.3d at 497.

Here, Plaintiff has provided no objective evidence of Scottsdale acting with knowledge or with reckless disregard of its unreasonableness. In fact, the Complaint lacks any allegations that Scottsdale acted with knowledge of or reckless disregard of any unreasonable conduct. See Complaint, Doc. 4. Because Plaintiff’s boilerplate allegations, applicable to any insurance contract are devoid of any specific factual information, summary judgment is proper. See *Foster v. State Farm Fire & Cas. Co.*, No. 22-cv-01221-PAB-JPO, 2024 WL 896757, 2024 U.S. Dist. LEXIS 36618, at *17 (D. Colo. Mar. 1, 2024) (dismissing common law bad faith claim as sufficient facts were not alleged). For the reasons and the reasons discussed *supra*, Scottsdale neither acted unreasonably nor with knowledge or reckless disregard of its unreasonableness. Therefore, Plaintiff’s common law bad-faith claim must be dismissed.

V. CONCLUSION

For these reasons above, the Court should grant Scottsdale’s Motion for Summary Judgment and enter judgement in Scottsdale’s favor on all claims.

DATED this 23rd day of December, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the above and foregoing was served via CM/ECF to all counsel of record, on this 23rd day of December, 2025 addressed to:

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