

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

Civil Action No. 1:24-cv-02669-PAB-KAS

GINA M. GILMORE,

Plaintiff,

v.

OWNERS INSURANCE COMPANY,

Defendant.

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**DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

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Defendant Owners Insurance Company (“Defendant” or “Owners”), by and through its counsel Adam P. O’Brien and Chan H. Park of Thomson, Coe, Cousins & Irons, LLP, submits its Motion for Summary Judgment as follows:

**Certificate of Conferral:** Conferral is not required. *See* D.C.COLO.LCivR 7.1(b)(3).

**INTRODUCTION**

Plaintiff’s Complaint arises out of her claim for insurance coverage for alleged hail damage that occurred on May 10, 2023. Plaintiff seeks damages against Defendant Owners based on its alleged improper denial of coverage under her insurance policy. The Complaint alleges claims for: (1) Breach of Contract; (2) Common Law Bad Faith; and (3) Statutory Bad Faith Pursuant to C.R.S. §§ 10-3-1115 and 10-3-1116.

After receiving notice of Plaintiff’s insurance claim, an independent adjuster inspected the property to assess the claimed property damage. The independent adjuster found that the alleged hailstorm did not cause property damage, including to roofing tiles.

Prior to filing this lawsuit, Plaintiff failed to provide Defendant with any cost of repair report, expert or engineering report, or proof of loss required by her insurance policy. Based on the lack of information and documentation from Plaintiff, Defendant reasonably relied on the independent adjuster's findings and the policy terms and exclusions to deny coverage.

Plaintiff's claims must be dismissed because the undisputed facts establish that: (1) Plaintiff failed to comply with the policy provisions; (2) Defendant sustained material and undue prejudice due to Plaintiff's failure to comply with multiple policy conditions before filing this lawsuit; (3) Defendant's coverage decision was reasonable, and a mere disagreement on coverage or claim value is insufficient to support common law bad faith or violation of C.R.S. §§ 10-3-1115 and 10-3-1116; and (4) Plaintiff cannot provide admissible evidence of violation of insurance industry standards, which is required to sustain a claim for common law bad faith or violation of violation of C.R.S. §§ 10-3-1115 and 10-3-1116.

#### **STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. Plaintiff filed suit on August 15, 2024 alleging that the property, located at 9285 Melborne Court, Parker, Colorado 80134-7583 ("Property"), incurred hail damage on May 10, 2023. **ECF No. 3 – Complaint, filed on September 26, 2024 at pg. 2, ¶8; Ex. A – Plaintiff's deposition transcript at 13:15-21.**

2. Plaintiff is the named insured on a Homeowners Insurance Policy issued by Defendant, policy number 44-883-661-00 ("Policy") for the Property, from January 28, 2023 through January 28, 2024, which provides coverage subject to the Policy's terms, conditions, provision, definitions, limitations, and exclusions. **ECF No. 22 – Scheduling Order, filed on**

December 12, 2024 at pg. 4, ¶3; **Ex. B – Certified Owners Insurance Policy at OWNERSGILMORE 000368.**

3. The Policy provides coverage for direct physical loss to covered property described in the Policy, except for losses excluded in the Policy. **Ex. B – Certified Owners Insurance Policy at OWNERSGILMORE 000378 (Perils We Insure Against).**

4. The Policy also provides the following, in relevant part:

#### **WHAT TO DO IN CASE OF LOSS**

##### **1. PROPERTY**

If a loss to covered property occurs, the **insured** must:

- a.** give **us** or **our** agency immediate notice.
- b.** protect the property from further damage or loss; make reasonable and necessary temporary repairs; and keep records of the cost.
- c.** make an inventory of all damaged and destroyed property; show in detail quantifies, costs, **actual cash value** and amount of loss claimed; attach to the inventory all available bills, receipts and related documents that substantiate the figures in the inventory.
- d.** send to **us**, within 60 days after **you** notify **us** or **our** agency of the loss, a proof of loss signed and sworn to by the **insured**, including:
  - 1) the time and cause of loss;
  - 2) the interest of **insureds** and all others in the property;
  - 3) **actual cash value** and amount of loss to the property;
  - 4) all encumbrances on the property;
  - 5) other policies covering the loss;
  - 6) changes in the title, use, occupancy or possession of the property;
  - 7) if required, any plans and specifications of any damaged building or fixtures; and
  - 8) the inventory of all damaged or stolen property required by **1.c.** above.
- e.** exhibit the damaged property to **us** or **our** representative as often as may be reasonably required.
- f.** cooperate with **us** and assist **us** in any matter relating to a claim.

**Ex. B – Certified Owners Insurance Policy at OWNERSGILMORE 000392-000393.**

5. The Policy provides the following general condition:

**6. CONDITIONS**

**f. Our Payment of Loss**

We will adjust any loss with **you**, and pay **you** unless another payee is named in the [P]olicy.

We will pay within 60 days after we receive **your** proof of loss and all other requested documents and the amount of loss is finally determined by an agreement between **you** and **us**, a court judgment or an appraisal award.

**Ex. B – Certified Owners Insurance Policy at OWNERSGILMORE 000386.**

6. The Policy also provides:

**6. CONDITIONS**

**g. Action Against Us**

We may not be sued unless there is full compliance with all the terms of this policy.

**Ex. B – Certified Owners Insurance Policy at OWNERSGILMORE 000398.**

7. The Policy provides the following relevant exclusions:

**3. EXCLUSIONS**

**b. Coverage A - Dwelling and Coverage B - Other Structures**

Except as to ensuing loss not otherwise excluded, we do not cover loss resulting directly or indirectly from:

(3) Faulty, inadequate or defective:

(a) construction, reconstruction, repair, remodeling or renovation;

(e) maintenance of a part or all of the **residence premises** or any other property.

(4) (a) wear and tear, marring, scratching or deterioration[.]

**Ex. B – Certified Owners Insurance Policy at OWNERSGILMORE 000381.**

8. Plaintiff did not maintain, repair, inspect, or replace the roof of the Property. **Ex. A – Plaintiff’s deposition transcript at 9:19-22, 21:5-8, 78:9-13, 95:20-96:7; Ex. H – Plaintiff’s Response to Defendant’s Request for Admissions at pg. 8, no. 2.**

9. On July 11, 2023, over two months after the alleged May 10, 2023 hailstorm, Plaintiff’s fiancé, Jeremy Dufor, reported Property damage from the May 10, 2023 hailstorm, including the roof, to Defendant. **Ex. A – Plaintiff’s deposition transcript at 19:2-20:7; Ex. C – Defendant’s Loss Notice, dated July 11, 2023 at OWNERSGILMORE 000010-000011.**

10. Plaintiff received Defendant’s Request for Proof of Loss and Records, dated July 11, 2023 (“Proof of Loss”). **Ex. D – Defendant’s Request for Proof of Loss at OWNERSGILMORE 000012-000024; Ex. A – Plaintiff’s deposition transcript at 69:10-23.**

11. On July 15, 2023, independent adjuster, Catastrophe Specialist, Inc. (“CSI”), inspected the Property and prepared a Property inspection report (“CSI Report”). **ECF No. 22 – Scheduling Order, filed on December 12, 2024 at pg. 4, ¶5; Exhibit E – CSI Report at GILMORE CSI 000061-000064.**

12. On August 15, 2023, Defendant emailed Plaintiff to advise that the July 15, 2023 Property Inspection revealed no hail related damage and requested Plaintiff send “any information to support [Plaintiff’s] hail damage claim.” **Ex. F – Defendant’s August 15, 2023 Email to Plaintiff at OWNERSGILMORE 000173.**

13. Plaintiff did not return a completed Proof of Loss to Defendant. **Ex. G – Defendant’s Claim Note, dated September 27, 2023 at OWNERSGILMORE 000466; Ex. H – Plaintiff’s Response to Defendant’s Request for Admissions at pg. 8, no. 3.**

14. Plaintiff received and reviewed correspondence sent by Defendant, dated August 28, 2023, which advised Plaintiff that there was no Policy coverage for Plaintiff's Claim, and advised Plaintiff to send Defendant additional information on the coverage determination. **Ex. A - Plaintiff's Deposition at 100:16-101:4; Ex. I – Defendant's Correspondence to Plaintiff, dated August 28, 2023 at Gilmore\_Doc\_Production\_00059-00060.**

15. On September 5, 2023, Plaintiff emailed Defendant to request a second Property assessment. **Ex. J – Plaintiff's Email to Defendant, dated September 5, 2023 at OWNERSGILMORE 000197.**

16. On September 5, 2023, Defendant emailed Plaintiff to request photos of property damage to determine if a second Property inspection was necessary. **Ex. K – Defendant's email to Plaintiff, dated September 5, 2023.**

17. Plaintiff did not send Defendant photos of Property damage to determine whether a second Property assessment was necessary. **Ex. A – Plaintiff's deposition transcript at 109:11-114:16.**

18. On February 20, 2024, Defendant emailed Plaintiff's public adjuster, Matthew Stanford, a copy of the Defendant's Coverage Position Letter and advised Mr. Stanford to submit new information on the Claim to reconsider Defendant's coverage position. **Ex. L – Defendant's Email to Public Adjuster, dated February 20, 2024 at OWNERSGILMORE 000343.**

19. Plaintiff did not send Defendant new Claim information for reconsideration of Defendant's coverage position on Plaintiff's Claim before filing the Complaint. **Ex. A – Plaintiff's deposition transcript at 109:11-114:16 and 96:10-99:24.**

20. Plaintiff's counsel, Chad T. Wilson, sent Defendant a letter of representation, dated March 12, 2024 ("Letter of Representation"). **Ex. M – Plaintiff's Letter of Representation at OWNERSGILMORE 000350.**

21. The Letter of Representation did not include new information or documentation for Defendant to reconsider its coverage position on Plaintiff's Claim. **Ex. M – Plaintiff's Letter of Representation at OWNERSGILMORE 000350.**

22. On March 19, 2024, Defendant emailed Plaintiff's counsel and acknowledged receipt of the Letter of Representation ("Defendant's March 19, 2024 Email to Plaintiff's Counsel"). **Ex. N – Defendant's March 19, 2024 Email to Plaintiff's Counsel at OWNERSGILMORE 000352.**

23. Plaintiff did not repair the roof of the Property following the alleged date of loss, May 10, 2023. **Ex. H - Plaintiff's Response to Owners' Request for Admissions at pg. 8, no. 2.**

24. Months after filing suit, Plaintiff disclosed for the first time to Defendant on November 27, 2024, an unidentified repair estimate as a part of Plaintiff's Initial Disclosures. The repair estimate was prepared on May 3, 2024 (several months before Plaintiff filed suit) and does not identify who prepared it ("Unidentified Repair Estimate"). **Ex. O – Plaintiff's Fed. R. Civ. P. 26 Disclosures and Unidentified Repair Estimate at Gilmore\_Doc\_Production 00208-00277.**

### **LEGAL AUTHORITY**

Summary judgment is appropriate when the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.

56(a). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If “the moving party does not bear the ultimate burden of persuasion at trial, it may satisfy its burden at the summary judgment stage by identifying ‘a lack of evidence for the nonmovant on an essential element of the nonmovant’s claim.’” *Bausman v. Interstate Brands Corp.*, 252 F.3d 1111, 1115 (10th Cir. 2001) (citations omitted).

“Once the moving party meets this burden, the burden shifts to the nonmoving party to demonstrate a genuine issue for trial on a material matter.” *Concrete Works of Colo., Inc. v. City & Cnty. of Denver*, 36 F.3d 1513, 1518 (10th Cir. 1994). The nonmoving party may not rest solely on the allegations in the pleadings, but instead must designate “specific facts showing that there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (quotations omitted). “To avoid summary judgment, the nonmovant must establish, at a minimum, an inference of the presence of each element essential to the case.” *Bausman*, 252 F.3d at 1115.

## ARGUMENT

### **I. Plaintiff’s Breach of Contract Claim should be dismissed because she cannot meet her burden to establish coverage.**

Plaintiff, as the insured, has “[t]he initial burden to prove [her] entitlement to recover under the general provisions of the policy.” *Rodriguez v. Safeco Ins. Co.*, 821 P.2d 849, 853 (Colo. App. 1991). “The burden then shifts to the insurer to prove the applicability of an exclusion from coverage; if the insurer makes this showing, the burden shifts back to the insured to show an exception to any coverage exclusion.” *Rocky Mt. Prestress, LLC v. Liberty Mut. Fire Ins. Co.*, 960 F.3d 1255, 1260 (10th Cir. 2020) (citing *Rodriguez*, 821 P.2d at 853)). Plaintiff’s breach of contract

claim fails because she cannot show that Defendant breached its obligation to pay a covered benefit under the Policy.

The Policy sets forth the following general conditions, which Plaintiff testified during her deposition that she understood. **Ex. A at 104:12-16 and 111:6-13.**

- Submitting the executed Sworn Proof of Loss within 60 days of reporting the Claim to the Defendant. **Ex. B at OWNERSGILMORE 000386 and 000392-000393.**
- Providing Defendant with immediate notice of the Property loss. **Ex. B at OWNERSGILMORE 000392.**
- Assisting Defendant on any matter, including resolving the Claim. **Ex. B at OWNERSGILMORE 000392-000393.**
- Making reasonable and necessary Property repairs to protect the property from further damage or loss. **Ex. B at OWNERSGILMORE 000392-000393.**

The evidence establishes that the Plaintiff did not comply with these conditions:

- Over two months after the alleged May 10, 2023 hailstorm, Plaintiff's fiancé, Jeremy Dufor, reported the Property damage claim to Defendant. **Ex. A at 19:2-20:7; Ex. C at OWNERSGILMORE 000010-000011.**
- Plaintiff could not provide a specific reason for the delay in reporting the Property damage claim to Defendant. **Ex. A at 19:10-20:3.**
- Plaintiff admitted that she did not provide Defendant the sworn and executed proof of loss within sixty days after her fiancé provided Defendant notice of the Claim on July 11, 2023. **Ex. G at OWNERSGILMORE 000466; Ex. H at pg. 8, no. 3.**
- Plaintiff did not maintain, repair, or replace the roof of the Property at any time. **Ex. A at 9:19-22; 21:5-8; 78:9-13; 95:20-96:7; Ex. H at pg. 8, no. 2.**
- Pre-litigation, Plaintiff did not send Defendant the requested Property photos depicting the loss, or additional information and documentation for reconsideration of Defendant's denial of Plaintiff's Claim. **Ex. A at 109:11-114:16 and 96:10-99:24.**

The foregoing facts establish that Plaintiff did not comply with the Policy's conditions, including the conditions for bringing suit. *See Northern Ins. Co. Ekstrom*, 784 P.2d 320 (Colo. 1989) (holding that if the meaning of an insurance policy is expressed in plain, certain, and readily understandable language, it must be enforced as written). Thus, the Defendant is entitled to summary judgment. *See Pub. Serv. Co. of Colo. v. Wallis Cos.*, 986 P.2d 924, 933 (Colo. 1999) (“[A] court should seek to give effect to all provisions [of an insurance policy] so that none will be rendered meaningless.”). Indeed, the Action Against Us provision of the Policy requires full compliance with the terms of the Policy before bringing suit. *See Ex. B – Certified Owners Insurance Policy at OWNERSGILMORE 000398.*

Further, to the extent the Court determines that the Plaintiff met her initial burden of establishing a genuine issue of material fact that coverage was triggered, Defendant is entitled to summary judgment because of the applicability of the following Policy exclusions:

### **3. EXCLUSIONS**

#### **b. Coverage A - Dwelling and Coverage B - Other Structures**

Except as to ensuing loss not otherwise excluded, **we** do not cover loss resulting directly or indirectly from:

#### **(3) Faulty, inadequate or defective:**

**(a)** construction, reconstruction, repair, remodeling or renovation;  
**(e)** maintenance of a part or all of the **residence premises** or any other property.

#### **(4) (a) wear and tear, marring, scratching or deterioration[.]**

Defendant's correspondence to Plaintiff dated August 28, 2023 set forth specific bases for Defendant's denial of Plaintiff's Claim. First, Defendant advised Plaintiff that the July 15, 2023 Property inspection revealed no property damage from the May 10, 2023 hailstorm. *See Ex. F* at

**OWNERSGILMORE 000173.** Second, Defendant cited to the foregoing Policy exclusions for faulty, inadequate or defective construction, reconstruction, repair, remodeling or renovation, maintenance, and wear and tear, marring, scratching or deterioration. **Ex. I at Gilmore\_Doc\_Production\_00059-00060.**

Plaintiff testified during her deposition that she understood that Property damage from wear and tear was not covered by the Policy. **Ex. A at 104:12-18.** Plaintiff further testified that she understood that not all types of Property damage were covered under the Policy. **Ex. A at 111:6-13.** Thus, Plaintiff was aware of the scope of the Policy, including the exclusions cited by Defendant in declining to extend Claim coverage. *See Unigard Sec. Ins. Co. v. Mission Ins. Trust*, 12 P.3d 296, 300 (Colo. App. 2000) (holding that the insured is charged with knowledge of the policy's terms and is therefore on notice of the scope of policy coverage). Prior to filing suit, Plaintiff provided no evidence to contradict Defendant's coverage position.

Finally, even if Plaintiff could establish that coverage otherwise existed, Plaintiff's claim fails because she cannot establish that the Policy conditions for payment of a loss are satisfied. The Policy is clear that payment for covered benefits is owed within 60 days after the proof of loss and all other requested documents are received, and the amount of the loss is determined by an agreement, a court judgment, or an appraisal award. *See Ex. B - "Our Payment of Loss" at OWNERSGILMORE 000386.* Plaintiff cannot establish that these conditions for payment were met, and, therefore, her breach of contract claim must be dismissed.

**II. Plaintiff's Breach of Contract Claim should be dismissed because the Defendant sustained material and undue prejudice due to Plaintiff's failure to satisfy Policy conditions.**

First, Plaintiff (through her fiancé) delayed reporting the Claim until over two months after the date of loss. **Ex. A at 19:2-20:7; Ex. C at OWNERSGILMORE 000010-000011.** Second, Plaintiff admitted that she did not submit the completed and executed Proof of Loss to Defendant. **Ex. H at pg. 8, no. 3.** Finally, Plaintiff failed to provide Defendant a copy of the Unidentified Repair Estimate totaling \$75,813.21 before filing the Complaint. The first time that Defendant became aware of this Unidentified Repair Estimate was when Plaintiff's counsel served Plaintiff's initial Rule 26 disclosures via email on November 27, 2024. *See Ex. O.* Plaintiff's delay in complying with Policy conditions and failing to provide Defendant with documentation and information to substantiate her alleged damages have prejudiced Defendant's ability to investigate and defend itself.

In *Gregory v. Safeco Ins. Co. of America*, 545 P.3d 942 (Colo. 2024), the Court held that the notice-prejudice rule applies to claims arising under first-party, occurrence-based homeowners' insurance policies. The *Gregory* Court adopted the following two-step approach set forth in *Clementi v. Nationwide Mu. Fire Ins. Co.*, 16 P. 3d 223 (Colo. 2001):

[A] Court must first determine whether an insured's notice of a claim or loss was timely. Such a determination should include an assessment of the timing of the notice and the reasonableness of any delay. If the court finds that the notice was untimely and that the delay was unreasonable, then the court should proceed to consider whether the insurer was prejudiced by the untimely notice. ... [T]he insurer bears the burden of proving by a preponderance of the evidence that it was prejudiced by the delayed notice. *Gregory*, 545 P.3d at 947 (citations omitted).

The *Clementi* Court explained that "[a] policy's requirement of notice 'as soon as practicable' means that notice must be given within a reasonable length of time under the

circumstances. An insured's failure to notify an insurer within a reasonable time constitutes a breach of contract requiring a justifiable excuse or extenuating circumstances explaining the delay." *Id.* at 226.

Plaintiff's Policy explicitly requires Plaintiff to give "immediate notice" of the Claim. **Ex. B – "What To Do in Case of Loss" at OWNERSGILMORE 000392.** Plaintiff's claim was untimely reported to Defendant by Plaintiff's fiancé, not Plaintiff, over two months after the subject hailstorm. **Ex. A at 19:2-20:7 and Ex. C.** Upon questioning on the untimely delay in reporting the claim to Defendant, Plaintiff was unable to provide any valid explanation on the delay in complying with the material Policy terms and conditions. **Ex. A at 19:10-20:3.** *See Clementi* at 16 P.3d at 226 (holding that the insureds' unexplained delay in notifying the insurer did not comply with the policy's notice provisions and was unreasonable as a matter of law).

Pre-litigation, Plaintiff failed to provide Defendant with requested information, documentation (including the proof of loss required by the Policy), and Property photographs that were responsive to Defendant's requests. *See Ex. K; Ex. A at 96:10-99:24, 109:11-114:16; Ex. L.* Notably, prior to filing suit, Plaintiff failed to provide Defendant with any cost of repair estimate that could possibly have been the basis for a payment of covered benefits. Defendant first became aware of the Plaintiff's estimate when it was disclosed as a part of Plaintiff's initial Fed. R. Civ. P 26(1) disclosures. *See Ex. O at Gilmore\_Doc\_Production 00208-00277.*

An insurance company suffers a material and substantial disadvantage when its claim investigation is delayed by the insured's late notice, the insured repeatedly fails to respond to an insurer's requests for information, and the insured later sues for bad faith. *See Cleveland v. Auto-Owners Ins. Co.*, No. 22-1109, 2023 U.S. App. LEXIS 15008, at \*9 (10th Cir. 2023); *Cribari v.*

*Allstate Fire & Cas. Ins. Co.*, 861 Fed. Appx. 693 (10th Cir. 2021). Here, Defendant sustained material and undue prejudice because of Plaintiff's delay in reporting the claim, failure to return the Proof of Loss (**Ex. H at pg. 8, no. 3**), withholding the Unidentified Repair Estimate until discovery commenced in this lawsuit (**Ex. O**), and asserting bad faith claims against Defendant (**ECF. No. 3 at ¶¶24-35**).

Plaintiff's delayed actions and inaction placed Defendant at a prejudicial disadvantage in investigating the Claim and defending itself during these bad faith proceedings. *See Hall v. Allstate Fire & Cas. Ins. Co.*, 20 F.4th 1319, 1324 (10th Cir. 2021) ("[T]he standard to establish a material and substantial disadvantage is whether an insured's conduct prevented a reasonable investigation under the circumstances, not whether an insurer's investigation was rendered impossible."). Plaintiff's breach of contract claim should therefore be dismissed. *See Hall v. Allstate Fire & Cas. Ins. Co.*, 20 F.4th 1319, 1323 (10th Cir. 2021) ("Under Colorado law, an insured may forfeit his right to recover if he fails to cooperate in violation of an insurance policy provision."); *Adams v. Am. Guarantee & Liab. Ins. Co.*, 23 F.3d 1242, 1246 (10th Cir. 2000) (explaining that a party moving for summary judgment may satisfy the initial burden by raising the lack of evidence on an essential claim, and the nonmoving party must then identify evidence "pertinent to the material issue" that "is significantly probative and would enable a trier of fact to find in the nonmovant's favor."). Plaintiff's breach of contract claim should be dismissed.

**III. Plaintiff's Common Law Bad Faith Claim should be dismissed because Defendant acted reasonably, and there is no admissible evidence that Defendant violated insurance industry standards.**

To establish a first-party bad faith claim, the Plaintiff must prove that Defendant acted unreasonably and with knowledge of or reckless disregard for the fact that no reasonable basis

existed for denying the claim. *Schultz v. GEICO Cas. Co.*, 2018 CO 87, ¶ 15; C.R.S. § 10-3-1113(3). A showing of unreasonableness, in and of itself, is insufficient to establish bad faith. Plaintiff must also establish that Defendant acted in reckless disregard of her claim. *See Goodson v. Am. Standard Ins. Co.*, 89 P.3d 409, 415 (Colo. 2004).

Simply disagreeing over the nature, extent, cause, and value of an insurance claim cannot establish that an insurer acted unreasonably, much less support a claim for bad faith. *See Bucholtz v. Safeco Ins. Co.*, 773 P.2d 590, 593 (Colo. App. 1988). “[W]hen there are no genuine issues of material fact, reasonableness may be decided as a matter of law.” *Zolman v. Pinnacol Assur.*, 261 P.3d 490, 497 (Colo. App. 2011); *see also Ayala v. State Farm Mut. Auto. Ins. Co.*, 628 F. Supp. 3d 1075, 1081 (D. Colo. 2022) (reasoning that whether an insurance company acted reasonably may be decided as a matter of law in appropriate circumstances)

Insurers are afforded wide latitude in their ability to investigate claims and to resist false or unfounded efforts to obtain funds. *Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849, 856 (Colo. App. 2007). Thus, if an insurer has a reasonable basis for its decision, a common-law bad faith claim must fail as a matter of law. *Id.*; *see also Pham v. State Farm Mut. Auto. Ins. Co.*, 70 P.3d 567, 573-74 (Colo. App. 2003). The reasonableness of the insurer’s conduct is determined objectively based on proof of industry standards and must be evaluated based on the information before the insurer at the time of its decision. *See Vansky v. State Farm Auto. Ins. Co.*, No. 20-cv-01062-PAB-NRN, 2022 U.S. Dist. LEXIS 55649, at \*9 (D. Colo. Mar. 28, 2022); *Ayala*, 628 F. Supp. 3d at 1081.

The undisputed facts establish that Defendant timely evaluated the Claim, diligently investigated the Claim with the limited amount of pre-litigation information and documentation

Plaintiff disclosed, promptly responded to Plaintiff's pre-litigation Claim inquiries, and reasonably relied on the findings and conclusions of the independent adjuster. Moreover, even if Plaintiff could muster evidence that Defendant acted unreasonably, Plaintiff cannot provide admissible evidence that Defendant acted with knowledge of or reckless disregard for the fact that no reasonable basis existed for denying the claim.

Plaintiff also cannot provide evidence of any violation of industry standards by Defendant. Plaintiff failed to disclose an expert or other witness to opine on insurance industry standards and whether Defendant complied with the standard of care. *See La. Purchase Condo. Ass'n, Inc. v. Am. Fam. Mut. Ins. Co.*, (“[T]he reasonableness of an insurer’s conduct is measured objectively based on industry standards.”) (citing *Zolman* at 496). On the other hand, Plaintiff failed to provide necessary information and documents for Defendant to reconsider the claim denial. **See Ex. G; Ex. H at pg. 8, no.3; Ex. A at 96:10-99:24 and 109:11-114:16.**

Plaintiff's expert, Brandon Allen of Allen Consulting Services, makes no reference to insurance industry standards, nor would he be qualified to offer an opinion on such standards. Regardless, his report was not submitted to Defendant prior to Plaintiff filing suit, and even disagreements between experts do not necessarily suggest that the investigation or denial of a claim was unreasonable. *See Sandoval*, 952 F.3d at 1237–38; *Avalon Condo. Ass'n v. Secura Ins.*, 2015 U.S. Dist. LEXIS 129373, at \*17 (D. Colo. Sept. 25, 2015) (“Although Plaintiff disagrees with [the insurer expert’s] findings, mere disagreement of this sort is insufficient for Plaintiff to sustain its bad faith claim.”) Moreover, the expert conclusions and opinions of the Defendant's retained expert, John B. Peterson, PE, align with the findings and conclusions of the July 15, 2023 CSI Property Inspection Report. **See Ex. E and Ex. P.** Both reports conclude that the Property's roof

was not damaged by hail impact from the alleged hailstorm. Thus, Plaintiff cannot create a genuine issue of material fact that Defendant acted unreasonably with knowledge of or reckless disregard for the fact that no reasonable basis existed for denying the claim. Plaintiff's common law bad faith claim should be dismissed.

**IV. Plaintiff's C.R.S. §§ 10-3-1115 and 10-3-1116 Claim should be dismissed because there is no evidence Defendant unreasonably delayed or denied payment of a covered benefit and violated insurance industry standards.**

As discussed above, there is a lack of evidence that Defendant unreasonably delayed or denied payment of a benefit covered under the Policy. Plaintiff's C.R.S. §§ 10-3-1115, 10-3-1116 claim should therefore be dismissed. Defendant reasonably relied on the findings and conclusions of the independent adjuster and the lack of hail damage at the Property during its inspection. *See Ex. E.* Furthermore, the Policy conditions triggering a requirement to issue a payment for a policy benefit were never satisfied, and Plaintiff failed to provide Defendant with any cost of repair report, expert or engineering report, or other evidence to dispute Defendant's coverage determination prior to filing suit. Thus, Plaintiff cannot meet her burden to provide admissible evidence that Defendant acted unreasonably in denying her claim. *See Schultz*, 2018 CO 87, at ¶ 19.

If an insurer has a reasonable basis for its claim decision, a statutory claim under C.R.S. §§ 10-3-1115 and 10-3-1116 must fail. *See Am. Family Mut. Ins. Co. v. Hansen*, 2016 CO 46, ¶ 32. The reasonableness of an insurer's conduct is determined by objective industry standards. *Schultz*, 2018 CO 87, at ¶ 15. "These standards may be established through expert opinions or state law." *Bethel v. Berkshire Hathaway Homestate Ins. Co.*, No. 17-cv-01456-CMA-KLM, 2019 U.S. Dist. LEXIS 13181, at \*19 (D. Colo. Jan. 28, 2019) (granting summary judgment in insurer's favor) (quoting *Peden v. State Farm Mut. Auto. Ins. Co.*, 841 F.3d 887, 890 (10th Cir. 2016) (citing

*Goodson v. Am. Standard Ins. Co.*, 89 P.3d 409, 415 (Colo. 2004); *Am. Family Mut. Ins. Co. v. Allen*, 102 P.3d 333, 343 (Colo. 2004)) (emphasis added)).

Plaintiff cannot establish that Defendant failed to pay a covered benefit owed under the Policy, much less that Defendant *unreasonably* delayed or denied payment of a covered benefit. *See El Dueno, LLC v. Mid-Century Ins. Co.*, No. 24-1110, 2025 U.S. App. LEXIS 13169, at \*7-\*8 (10th Cir., May 30, 2025). Without evidence that Defendant acted unreasonably and violated insurance industry standards, Defendant is entitled to summary judgment dismissing the Plaintiff's claim for violation of C.R.S. §§ 10-3-1115 and 10-3-1116.

Finally, Plaintiff's common law bad faith and statutory claims fail because her breach of contract claim fails as a matter of law. *See Ayala*, 628 F. Supp. 3d at 1085-1086 (determining that the plaintiff's bad faith claim failed when coverage was properly denied and the bad faith claim flowed from the denial of coverage).

### CONCLUSION

Defendant respectfully requests that the Court enter summary judgment dismissing all of Plaintiff's claims with prejudice.

Respectfully submitted this 11th day of August, 2025.

**THOMPSON, COE, COUSINS & IRONS, LLP**

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*Attorneys for Defendant Owners Insurance Company*

### CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of August, 2025, a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was filed with the Court via CM/ECF, and served on the following counsel:

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