



reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

3. The burden on the moving party is substantial. The movant must show the absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once this burden is met, the nonmoving party must demonstrate genuine issues for trial on material matters. *Concrete Works, Inc. v. City & County of Denver*, 36 F.3d 1513, 1518 (10th Cir. 1994).
4. Crucially, all factual disputes must be resolved in favor of the nonmoving party, and all reasonable inferences must be drawn in their favor. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

### III. BREACH OF CONTRACT STANDARD

5. As for summary judgment on breach of contract the Plaintiff must show that there is evidence: (1) the existence of a contract; (2) performance by the plaintiff or some justification for nonperformance; (3) failure to perform the contract by defendant; and (4) damages suffered by the plaintiff as a result of defendant's breach. *W. Distrib. Co. v. Diodosio*, 841 P.2d 1053, 1058 (Colo. 1992). In this case, Defendant does not argue that a contract did not exist between Plaintiff and Defendant or that Plaintiff failed to timely pay premiums. Rather Defendant argues that Plaintiff did not perform certain tasks under the policy. As such, Defendant argues that Defendant is excused from performing under the contract. (See Defendant's Motion [Doc 36] at pages 9-11 of 19). Plaintiff will show evidence that Plaintiff did nothing under the policy that would allow this court to dismiss her case, and Defendant was not prejudiced by anything Plaintiff did or did not do. Defendant failed to perform under the contract and Plaintiff as damaged by such failure.

#### IV. STATUTORY AND COMMON LAW “BAD FAITH” STANDARDS

6. In Colorado, to establish first-party bad faith against an insurance company in a property damage case, a plaintiff can prove both elements of the statutory claim under C.R.S. § 10-3-1115 and -1116 and/or the common law bad faith breach of contract claim.
7. Under the statutory claim, a plaintiff must show that the insurer "unreasonably delayed or denied payment of a covered benefit" when the benefit was owed to the insured. *Kisselman v. Am. Family Mut. Ins. Co.*, 292 P.3d 964, 972 (Colo. App. 2011). An insurer's conduct is unreasonable when the insurer's action is "without a reasonable basis." C.R.S. § 10-3-1115(2). The statutory claim requires no proof of knowing conduct by the insurer. *Fisher v. State Farm Mut. Auto. Ins. Co.*, 419 P.3d 985, 991 (Colo. App. 2015).
8. For the common law bad faith breach of contract claim, the plaintiff must prove that the insurer acted both unreasonably and with knowledge or reckless disregard of the unreasonableness of its conduct. *Goodson v. Am. Standard Ins. Co.*, 89 P.3d 409, 415 (Colo. 2004). The reasonableness of an insurer's conduct is determined objectively, based on industry standards. *Am. Family Mut. Ins. Co. v. Allen*, 102 P.3d 333, 343 (Colo. 2004). Colorado courts have clarified that in property damage cases specifically, an insurer's obligations include conducting a prompt and thorough investigation, and when benefits are owed, to pay them without unreasonable delay. *Banning v. Pruco Life Ins. Co.*, 997 F.3d 1122, 1132 (10th Cir. 2021) (applying Colorado law).

#### V. INDUSTRY STANDARDS

9. As far as industry standards related to handling claims reasonably, the Colorado legislature set out a very lengthy laundry list of standards in C.R.S.A. § 10-3-1104(h). Some of the standards that may apply here are:

*(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:*

*(I) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; or*

*(IV) Refusing to pay claims without conducting a reasonable investigation based upon all available information; or*

*(VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear; or*

*(VII) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; or*

*(XII) Delaying the investigation or payment of claims by requiring an insured or claimant, or the physician of either of them, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information; or*

*(XIV) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or.*

## **VI. RESPONSE TO “STATEMENT OF UNDISPUTED MATERIAL FACTS”**

10. The “Undisputed Material Facts” recited by counsel for Defendant in its motion are not exactly facts, but rather are an advocative narrative recited by counsel for Defendant.

While some of the words used in this section may contain facts, they also contain argument made by agents for Defendant or counsel for Defendant. For example, see paragraphs 8, 9, 12, 13, 14, 16, 17, 19, 21, 23 and 24. Rather than waste the court’s time with an exhaustive review of what is fact and what is argument, suffice it to say that Plaintiff does not agree with Defendant’s Statement of Undisputed Facts. How Plaintiff disputes those facts will be set out below in various arguments.

## **VII. ARGUMENT AS TO BREACH OF CONTRACT**

### **A. Defendant’s Arguments as to Alleged Failure to Comply with Policy**

11. The insurance contract at issue in this case covered Gilmore’s “residence premises.” (See [Doc 36-2] at page 23 of 56). There is not dispute that Gilmore’s claim, which is made the

basis of this suit, is for damage to her residence premises (damage to her roof and exterior of her home). The insurance contract at issue in this case covered “risk of direct physical loss to covered property...” (See [Doc 36-2] at page 26 of 56). In other words, the policy was supposed to cover direct physical loss to Gilmore’s residence (including her roof and exterior). The insurance contract at issue in this case does contain exclusions, but none of those exclusions are for wind and hail damage. (See [Doc 36-2] at pages 27-30 of 56). The insurance contract at issue in this case was in force and effect on the date of loss and covered a policy period of 01/28/2023 to 01/28/2024. (See [Doc 36-2] at page 16 of 56). Defendant does not argue in its motion that at the time of the loss the insurance policy was not in effect. Therefore, the evidence is that a contract existed between Plaintiff and Defendant that covered the hail and wind loss that Plaintiff claimed occurred on or about 05/10/2023.

12. Since there is a valid contract the next issue whether there is performance by the plaintiff or some justification for nonperformance. There is no issue as to the fact that Plaintiff performed by paying her premiums on time. However, Defendant argues that Plaintiff failed to perform certain tasks outlined in the “What To Do In Case of Loss” section of the contract (after the claim was filed). (See [Doc 36-2] at pages 40-41 of 56).

13. The first task that Defendant argues that Plaintiff failed was to give “immediate notice” of the claim. Defendant argues that the court must dismiss Plaintiff’s case because Plaintiff reported her loss two months after the date of loss. (See Defendant’s Motion [Doc 36] at page 9 of 19). Defendant argues this reporting was not “immediate.” The policy has a definitions page (See [Doc 36-2] at pages 21-22 of 56), but “immediate notice” is not

defined. However, how long Plaintiff had to report her claim is clearly set out in the “What To Do In Case of Loss” section that Defendant relied upon. This provision says:

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

a. give us or our agency immediate notice. In case of:

(1) theft also notify the police and provide them with a complete inventory of stolen or damaged property.

(2) loss under ADDITIONAL COVERAGES, c.(1) Credit Card and Electronic Fund Transfer Card Coverage and c.(2) Check Forgery Coverage, also notify the issuer of the card or the bank.

(3) loss or damage by wind or hail, notice of the loss or damage must be given to us or our agency **within one year after the date the loss or damage occurred.**

(See [Doc 36-2] at pages 40-41 of 56) (emphasis added).

14. It seems obvious that the policy requires that immediate notice must be given in regard to theft, credit card coverage and check forgery. It is also obvious that specifically with regard to reporting wind and hail damage the term “immediate” means within one year of the date of loss. Plaintiff reported her loss within two months of the date of loss, which is immediate on its own, but certainly meets the requirements under the “What To Do In Case of Loss” section. Plaintiff beat the deadline by 10 months. Therefore, the evidence is that Plaintiff complied with this task under the “What To Do In Case of Loss” section. Defendant provides no authority or evidence to support its prayer that the court dismiss Plaintiff’s case because she reported her loss two months after the date of loss.

15. Even if Defendant can show that a two-month delay was unreasonable, it is Defendant’s burden to show prejudice by the delay. See *Clementi v. Nationwide Mut. Fire Ins. Co.*, 16 P.3d 223, 226 (Colo. 2001) and *Gregory v. Safeco Insurance Company of America*, 545 P.3d 942 (Colo. 2024). In *Gregory* the policy had a 365-day claim reporting deadline like in this case, and the insured in *Gregory* didn’t report the claim until several months after the 1-year deadline. In remanding the case back down so that Safeco could try to prove prejudice, the Colorado Supreme Court in *Gregory* noted that in an occurrence policy (like

we have here) timeliness of notice is not a fundamental contract term that is a condition precedent to coverage itself.

Accordingly, we adhere to our now-settled precedent that in an occurrence policy, the purpose of notice is simply to allow the insurer to investigate, to attempt to resolve the claim, and to defend against it, and thus, in this context, the timeliness of notice is **not a fundamental contract term that is a condition precedent to coverage** itself. *See Craft*, 343 P.3d at 958; *Clementi*, 16 P.3d at 227. *Gregory* at 949 (emphasis added)

16. If, as per the Colorado Supreme Court, timeliness of notice is not a fundamental contract term then whether Gilmore complied or not is not determinative. The court cannot dismiss Gilmore's case even if the court finds that reporting the claim within two months is not reasonable. Gilmore's reporting was reasonable because it was done within two months and because it was done within the one-year deadline set out in the policy. As per *Gregory*, the court's determination should stop there. However, even if the court were going to entertain a prejudice argument by Defendant, the Defendant has wholly failed to provide any evidence of prejudice. Defendant provides a lot of conclusory statements about how it was prejudiced by a two-month delay (See [Doc 36] pages 12-14 of 19) but has not provided one scrap of evidence to prove it. (Remember that the burden has shifted to the Defendant to prove prejudice and that burden must be met by providing evidence). Defendant never even explains in its motion how it says it was prejudiced. For example, how did the two-month delay specifically prevent Defendant from investigating the claim? Defendant is silent on this topic. There is no proof of intervening weather events between the date of loss and the notice of loss, or further roof deterioration, or something that the carrier's adjuster said in their inspection report. On the contrary, the evidence is that Defendant never brought up the two-month delay or any prejudice associated with it. For example, Defendant's adjuster wrote a report after its inspection. (See [Doc 36-5]). There

are two important things in this report. First, is that in the “Scope of Damage” section of this report the adjuster finds that there is zero hail damage to Plaintiff’s roof. An insurance company cannot be prejudiced by a two-month delay in a hail claim when the insurer finds that there is not hail damage. Nothing could have happened in those two months that would be confused as hail damage since the Defendant didn’t find any hail damage. Second, this report is devoid of any mention that the 60 days between the date of loss and the inspection was any kind of problem for this adjuster. Surely, if the adjuster felt like the 60-day delay affected his inspection he would have noted it. Not only that, but Defendant never mentioned the 60 days in its claim determination letter. (See [Doc 36-9]). Surely if the 60-day delay was so important (so important that Defendant is now asking the court to dismiss Plaintiff’s case) then Defendant would have mentioned the delay in their claim determination letter. A review of the claim determination letter [Doc 36-9] shows that Defendant had no problem denying the claim and made zero mention of the delay. Policy provisions are cited in the letter, but the Defendant never cited the “What To Do In Case of Loss” section or mention the time gap between the date of loss and the notice of loss. Defendant provides nothing from which this court could even think about the two months prejudicing Defendant. Defendant’s motion for summary judgment on this point should be denied.

17. Next Defendant asks this court to dismiss Plaintiff’s lawsuit because Plaintiff did not provide Defendant with a sworn proof of loss as set out in the “What To Do In Case of Loss” section is to provide a sworn proof of loss. Plaintiff does not deny that a proof was requested, and Plaintiff testified that if Defendant asked her for anything she would have

provided it (See **Exhibit F**, page 70, lines 20-22). Plaintiff has three arguments with regard to the proof of loss issue.

18. First, Plaintiff asserts that she substantially complied with the proof of loss. If one looks at the proof of loss form that Defendant sent to the Plaintiff it asks for certain information including, name of the insured, policy at issue, policy number, time and date of loss, who was living at the property, title questions, and amount of damages claimed. (See [Doc 34-6] at page 4 of 13). However, we know that Defendant already had this information (or that Plaintiff provided it) based on Defendant's Loss Notice. (See [Doc 34-3]). The loss notice contains name of the insured, policy at issue, policy number, date of loss, who was living at the property (Gina Gilmore and her fiancé Jeremy Dufor). *Ibid*. The Defendant did not mention any problem related to a proof of loss when it made internal determinations about the claim. (See [Doc 36-6]). When Defendant sent its claim determination letter Defendant did not mention the proof loss or that it required any more information from the proof of loss. (See [Doc 36-9]). Defendant must not have needed anymore information because Defendant had all the information it required to deny the claim. *Ibid*. For example, there was no mention that letter by Defendant that it could not make a decision (or was prejudiced in making a decision) because it did not have title information, etc. *Id*.
19. Second with regard to the proof of loss, even if Plaintiff did not substantially comply with the proof of loss request, the arguments are similar to the timely notice issue. Defendant must show that they were prejudiced by not receiving a formal proof of loss. *Gregory v. Safeco Insurance Company of America*, 545 P.3d 942 (Colo. 2024). The Defendant has wholly failed to do so. Defendant says it was prejudice but never in its motion does it say exactly how it was prejudiced. None of the documents related to the investigation ever

mention that the investigation was hindered in any way by lack of information. (See [Doc 36-5], [Doc 36-6], [Doc 36-9], [Doc 36-10], and [Doc 36-11]). In none of these documents does Defendant inform Plaintiff that its investigation was prejudiced or hindered in any way.

20. Third, is the case of *Hartford Fire Ins. Co. v. Hammond*, 92, P. 686, 687 (Colo. 1907).

Defendant waived any proof of loss requirement because it denied the claim on other grounds and not because Plaintiff failed to submit a proof of loss. On facts somewhat similar the Supreme Court of Colorado found as follows:

“There must be a substantial compliance with the terms of the policy in furnishing the preliminary proofs before the assured is entitled to any indemnity in the case of loss, unless the company waived the defects in the proofs or waived the proofs altogether by putting a refusal to pay on other grounds.’ The refusal to pay in this case was not because of the absence of this statement or proof of loss, but because it was contended that the insured overestimated the amount of his loss, and, having based the refusal upon grounds other than the absence of the preliminary proof, it is well settled that that objection was waived.”

*Hartford Fire Ins. Co. v. Hammond*, 92, P. 686, 687 (Colo. 1907).

21. As repeatedly pointed out above, looking at all the claim material already cited above,

Defendant never made any mention that the failure to provide a formal proof of loss had anything to do with the denial of Plaintiff’s claim. By authority of *Hammond*, the Defendant has waived any argument here that Plaintiff’s case should be dismissed due to failure to provide a formal proof of loss.

22. Defendant argues that Plaintiff’s breach of contract claim must be dismissed because

Plaintiff did not “maintain, repair, or replace the roof of the Property at any time.” (See [Doc 36] at page 9 of 19). Defendant fails to show how this would be a ground for summary judgment. Defendant cites not case law or policy provision that says that an insured, after her roof claim has been completely denied by the insurer, must replace her roof anyway.

The only policy provision that Defendant cites is a provision that says it can deny a claim if the damage is caused by faulty, defective, or inadequate maintenance. But Defendant says that the court should dismiss Plaintiff's lawsuit because she did not replace the roof after Defendant denied the claim. That is a bit of an odd proposition, and it does not fit the policy provision cited by Defendant. An insured buys insurance to have money from her insurance company to make repairs. It makes no sense to say that once her insurance company denies her claim the insured must replace her roof in order to maintain suit. Again, Defendant cites no policy provision or case law to support this argument. Also, Defendant fails to show how it was prejudiced by Plaintiff not replacing her roof after the claim was denied. The argument should be denied.

23. Defendant argues that Plaintiff's breach of contract claim must be dismissed because before the lawsuit was filed, Plaintiff did not send Defendant the "requested" property photos or additional information. (See [Doc 36] at page 9 of 19). Defendant fails to show that anything was actually "requested" by Defendant prior to litigation. To support this argument Defendant cites testimony by the Plaintiff but never cites any proof that anything was actually requested. Any talk by Defendant about other information was in terms of "if you have anything further...". (See [Doc 36-9]; see last full paragraph on page 3 of 4). So, nothing was requested. Secondly, Colorado is not a state (like Texas) that requires any kind of pre-suit letter to providing of information in the first-party property context. Defendant cites no policy provision, statute, or case law to the effect that an insured must send a reconsideration letter to the insurer before filing suit. This argument should be denied.

24. Based on the above, all arguments by Defendant that the court should grant its motion for summary judgment based on Plaintiff's alleged failure to comply with the policy should be denied.

**B. Genuine Issue of Material Fact as to Breach of Contract.**

25. Plaintiff has attached to this response **Exhibit A, Exhibit B, Exhibit C and Exhibit D** **Exhibit A**, which are the report, testimony history, CV, and Declaration of Brandon Allen. Mr. Allen was retained as Plaintiff's expert in this case to opine as to causation and cost of repair. Mr. Allen's education, training, experience and background make him uniquely qualified to render opinions in this case. (See **Exhibit C** and **Exhibit D**). Among other things, Mr. Allen has over 20 years of experience in the insurance claims industry, having worked for various companies including Vericclaim/Sedgwick, Crawford & Company, and as an independent adjuster. (See **Exhibit A, Exhibit C** and **Exhibit D**). Throughout his career, he has adjusted between 2,000 to 3,000 similar claims involving storm damage to residential and commercial properties, including several hundred claims specifically involving storm damage to concrete tile roofing (which is what Gilmore alleges here). *Ibid.* Mr. Allen opined that the loss occurred on May 10, 2023. (See **Exhibit A** and **Exhibit D**). Allen researched NOAA weather data, which supported hail up to 1.75 inches in the area on the date of loss. *Ibid.* While inspecting Gilmore's roof Allen found scattered cracked, chipped and broken roof tile consistent with hail damage. *Id.* Allen researched Gilmore's roof tile and found that her tile is no longer distributed. *Id.* Allen opined that because the tile is no longer manufactured replacement tiles will not fit due to "lugs and overlaps" on the tile. *Id.* As such, Allen states since there is no available tile that fits, the roof will require replacement. *Id.* Allen wrote an itemized estimate of what it will cost to replace

the roof tiles and otherwise repair all covered damages, and that estimate totals \$74,630.62. *Id.* Allen's itemized estimate and photos showing damage are at the end of Allen's 7-page report. (See **Exhibit A**). At the very end of **Exhibit A** (after the estimate) Allen includes industry technical materials to support his opinions. *Ibid.* All of the above is evidence that Plaintiff's property suffered a covered loss due to hail that should have been covered by Defendant in the amount of \$74,630.62. It is evidence that Defendant should have seen and noted this covered damage and paid for it. Attached as **Exhibit E** is a photo sheet of photos taken by Defendant during the claims handling process on July 15, 2023. Almost all of the photos show hail damage to Gilmore's property that the Defendant's adjuster was seeing and taking pictures of. Many of the photos are the same as those taken by Brandon Allen. They show obvious hail damage to the Gilmore's property. However, Defendant's adjuster unilaterally, and without any explanation, annotated the photos with comments like "not storm related." This is so on photos of the exterior of Gilmore's home before the adjuster got on the roof. (See **Exhibit E**, page 2-68). These kinds of comments are done throughout photos of the exterior elevations of Gilmore's property. But there is no explanation as to why photos of circular damage to a deck rail (for example) were supposedly not storm related. The photos that Defendant's adjuster took of the roof tiles are especially telling. (See **Exhibit E**, pages 70-114). She essentially takes photos of much of the same hail damage that Allen took. (Compare Brandon Allen photos in **Exhibit A**, pages 27-56 to Defendant's photos at **Exhibit E**, pages 70-114). Rather than commenting that the damaged roof tiles were "not storm related" the Defendant's adjuster simply and repeatedly comments that the photos shows "Damaged concrete tile." (See **Exhibit E**, pages 73-105; 112-113). We know from the photos of the exterior of the home that

Defendant's adjuster was capable of determining when something was not storm related and commenting on it (despite the unilateral nature of the comments). The fact that she did not make similar comments about the damaged roof tiles is telling. If Defendant's adjuster really thought these damaged roof tiles were not caused by storm damage, she would have said so. She didn't. However, the evidence from Brandon Allen shows that Gilmore did suffer covered storm damage on her roof that Defendant should have covered and paid. All of this evidence raises material fact issues for a jury to determine whether Defendant should have covered and paid Gilmore's claim, and whether the fact that Defendant did not pay Gilmore's claim means that Defendant breached its insurance contract with Gilmore.

26. Defendant discusses the fact that Gilmore admitted in her deposition that the policy does not cover wear and tear damages. Defendant cites a provision of the policy that says that the insurance does not cover faulty construction, maintenance, etc. However, Plaintiff did not make a claim, and is not suing here, for damages that are the result of wear and tear or faulty construction and maintenance. Plaintiff is suing for covered damages outlined in the Brandon Allen report and photos and as is confirmed in Defendant's photos in **Exhibit E**. While there certainly may be wear and tear on Plaintiff's home, she is not making a claim for it and none of the damages estimated by Brandon Allen includes wear and tear damages. Therefore, and again, Gilmore does not deny that the policy does not cover wear and tear. However, Gilmore is not seeking relief for wear and tear. As such, the wear and tear and faulty construction/maintenance policy provisions have not relevance to Plaintiff's causes of action or Defendant's summary judgment.

### VIII. BAD FAITH BREACH OF INSURANCE CONTRACT AND *GOODSON*

27. As a preliminary matter, the Plaintiff has asserted two causes of action related to “bad faith.” Plaintiff has asserted a cause of action for Bad Faith Breach of Insurance Contract. (See Plaintiffs’ Second Claim for Relief in its Complaint; [Doc 3] at pages 3-4 of 5). This is what is sometimes referred to as “common law bad faith.” Plaintiff has also asserted a cause of action for statutory violations. (See Plaintiffs’ Third Claim for Relief in its Complaint; [Doc 3] at pages 4 of 5). This is sometimes referred to as “statutory bad faith.”
28. As to “statutory bad faith,” (and Plaintiff would argue also as to “common law bad faith”), the Plaintiff doesn’t have any extra burden as to evidence in addition to the evidence showing breach of contract. Rather the jury will look at the evidence submitted to it as to how the Defendant handled Plaintiff’s claim and decide whether those actions were unreasonable.
29. To support several of its propositions, Defendant cites the often-cited case of *Goodson v. American Standard Ins. Co.* 89 P.3d 409 (Colo. 2004). It is important to point out that the court in *Goodson* was only talking about a bad faith breach of insurance contract (common law bad faith). As pointed out above, one of Plaintiff’s causes of action is Bad Faith Breach of Insurance Contract. The *Goodson* court was not talking about statutory bad faith. Therefore, *Goodson* does not apply to statutory bad faith as set out in Plaintiffs’ Third Claim for Relief in its Complaint. (See [Doc 3] at pages 4 of 5). If *Goodson* places any extra burden on Plaintiffs (and Plaintiffs argue that it does not) then that only applies to Plaintiffs Second Claim for Relief for bad faith breach of the insurance contract.

30. Defendant cites *Goodson* for the proposition that an insured must hire an expert to show that an insurance company is liable for bad faith breach of contract. The Plaintiffs have several points to raise about *Goodson*.
31. First, *Goodson* does not say that an insured in a first-party case (like this case) must hire an expert to prove bad faith breach of insurance contract. What *Goodson* says is: “The reasonableness of the insurer’s conduct must be determined objectively, based on proof of industry standards.” The *Goodson* court cited *Travelers Ins. Co. v. Savio*, 706 P.2d 1258, 1275 (Colo. 1985). The *Savio* case was a first-party workers compensation case. The court in *Savio* said nothing about any requirement that the insured had to hire an expert to prove bad faith. The court in *Savio* said: “Whether an insurer has acted reasonably in denying or delaying approval of a claim will be determined on an objective basis, requiring proof of the standards of conduct in the industry.” The plaintiff in *Savio* did not have an expert and, interestingly, with regard to standards of conduct in the industry, the standards the court looked at where the workers compensation rules and regulations within the workers compensation statutes. *Savio* at 1276.
32. *Goodson* also says: “The aid of expert witnesses is often required in order to establish objective evidence of industry standards.” *Goodson* at *v. American Standard Ins. Co.* 89 P.3d 409, 415 (Colo. 2004). This is an odd comment by the *Goodson* court for several reasons. First, it is odd because the court did not say that an insured must hire an expert to prove industry standards. The court did not say an expert was required, but rather “is often required.” What does that mean? This is ambiguous. It is especially ambiguous since this comment about experts had nothing to do with the *Goodson* court’s holding, which was that an insured could recover for emotional distress without proving substantial property

or economic loss. *Goodson* at 409. The comment (about experts being often required) is made odder by the fact that the *Goodson* court cited the case of *Reddon v. SCI Colorado Funeral Services, Inc.*, 38 P.3d 75, 81 (Colo. 2001) for the proposition that the aid if expert witnesses if often required. But the *Reddon* case was not a bad faith insurance case at all. It wasn't even an insurance case (no insurance company was a party to the case). *Reddon* was an auto collision case where the defendant alleged that the plaintiff's chiropractor caused most of the plaintiff's injuries (as opposed to be caused by the car wreck). In *Reddon* the court was not talking about proving the standard of care for an insurance company. The *Reddon* court was talking about the standard of care for a licensed chiropractor and "professionals" in general. The *Reddon* court said: "When a claimant levels a negligence or fault claim against a professional, that professional is judged according to the tenets of the field to which he or she belongs. [citations omitted]. The successful claimant will therefore demonstrate that the professional's conduct fell below the standard of care appropriate to the profession. Expert testimony is generally necessary to assist the trier of fact in determining the applicable standards because in most cases such standards are not within the purview of ordinary persons." That makes sense. Most states require a plaintiff suing a licensed professional to provide some proof that an expert in the same field as the potential defendant (the licensed professional) found that the potential defendant's conduct fell below the standard of care for that profession. (i.e. Colorado Revised Statutes § 13-20-602). But again, the court in *Reddon* was not talking about an insurance company. It was talking about a licensed chiropractor. None of the cases cited by Defendant in its brief hold that an insurance company is the same as a doctor, engineer, etc., or that an insurance company is a licensed professional who cannot be held liable

without an expert report. The *Goodson* court certainly didn't say so. This is why this one comment about experts in the *Goodson* makes no sense. There is nothing in the law that would indicate that a first-party plaintiff must provide expert testimony to prove industry standards that an insurance company must reasonably follow.

33. However, in line with the *Savio* case (where the court looked at the workers compensation rules and regulations in the workers compensation statute for industry standards) most, if not all, of the industry standards related to how an insurance company in Colorado should act are set out in the Colorado Unfair Claims Settlement Practices Act as set out in C.R.S.A. § 10-3-1104(h) (more fully set out in paragraph 9 above). Courts instruct juries every day what the law is and there is nothing so complicated about C.R.S.A. § 10-3-1104(h) that a jury cannot understand. A jury does not need an expert to determine whether an insurance company is guilty of the standards set out in C.R.S.A. § 10-3-1104(h).

#### **IX. ARGUMENT AS TO BAD FAITH**

34. For both the statutory bad faith and bad faith breach of contract causes of action the Plaintiff must prove that the Defendant acted unreasonably. To succeed in the bad faith breach of contract claim, the Plaintiff also has to show that Defendant knowingly or recklessly disregarded the validity of the Plaintiffs' claim. There are fact issues in this case as to whether Defendant acted unreasonably and if that unreasonable conduct was done knowingly or with reckless disregard for the validity of the claim.
35. As pointed out above, all of the evidence set out above shows that Defendant unreasonably denied Plaintiff's covered hail damage roof claim. This was not a situation where the insurance company missed a thing or two. This is a situation where Defendant wholesale ignored and denied Plaintiffs' entire roof claim. As pointed out in paragraph 25 above,

Defendant's adjuster photographed the same hail roof damage to Plaintiff's roof tiles that Brandon Allen did. She noted that they were damaged tiles and unlike the photos of the exterior of the home, she did not say the damage was not related to the hailstorm. All we have as an explanation of Defendant's decision is a letter from a claim handler who said he looked at the photos (the ones that the field adjuster took of hail damage to Plaintiff's roof and said that by looking at the photos he doesn't think they are hail damaged (because they done have crescents and stars). (See [Doc 36-9]). Defendant did not provide any expert basis for this crescents and stars excuse. However, Brandon Allen provided exemplar photos in his report from hail damage studies by experts in the first that show what hail damage to tile roofs looks like. The hail damage to Plaintiff's roof was the same as hail damage in the exemplars. (See **Exhibit A** at page 6 of the Allen report). Thus, the evidence is that the field adjuster noted damage to the roof that she did not say was not related to the storm. Then some guy at the home office denied the claim after looking at the photos and not seeing crescents and stars. And this guy didn't even provide Plaintiff with expert material or technical papers to support his crescents and stars theory. The evidence raises material issues of fact as to whether Defendant unreasonably denied the claim it denied and whether it did so deliberately or with reckless disregard for the validity of Plaintiffs' claim. Certainly, making a claim decision by looking at photos and making up a crescents and stars excuse rises to unreasonableness and also show a reckless disregard.

36. Looking at the industry standards set out in C.R.S.A. § 10-3-1104(h) as set out above, including, *Misrepresenting pertinent facts relating to coverages at issue; Refusing to pay claims without conducting a reasonable investigation based upon all available information; Not attempting in good faith to effectuate prompt, fair, and equitable*

*settlements of claims in which liability has become reasonably clear; Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; or Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.*

37. All paragraphs above (and Plaintiffs' exhibits and documents in the record that Plaintiffs relied upon) show that there is ample evidence that raises fact issues from which a jury could determine that Defendant unreasonably denied Plaintiff's claim and did so with knowledge or reckless disregard of the unreasonableness of its conduct. Such actions are in contradiction of the industry standards set out in C.R.S.A. § 10-3-1104(h)
38. Based on the above Plaintiffs respectfully pray that the court deny Defendant's motion for summary judgment in its entirety.

Submitted on September 9, 2025.

Respectfully submitted,

By: /s/ Patrick C. McGinnis

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**CERTIFICATE OF SERVICE**

I hereby certify that on I hereby certify that on Friday, September 9, 2025, I electronically transmitted this document to the Clerk of Court using the CM/ECF system for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to defendant(s) counsel of record.

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