



accept or deny coverage for over two years, despite having received full notice, documentation, and repeated offers of cooperation.

Rather than investigating and processing the claim as required under both the policy terms and Illinois law, Defendant Insurer engaged in a pattern of delay, obstruction, and shifting justification to avoid its contractual obligation. Defendant Insurer's inaction constitutes a de facto denial and breach of its insurance policies, which provide coverage for physical loss or damage to the property, loss of business income, and related extra expenses. The undisputed record establishes that a covered loss occurred, that Plaintiffs fulfilled their obligations under the policy, and that Defendant Insurer failed to conduct a timely or good faith investigation of the claim. Accordingly, Garfield Plaintiffs are entitled to summary judgment as a matter of law.

## **II. STATEMENT OF UNDISPUTED MATERIAL FACTS**

The Garfield Plaintiffs have filed a separate statement of material facts pursuant to Local Rule 56.1(a)(3), identifying the facts they assert are undisputed and entitle them to partial summary judgement as a matter of law.

## **III. SUMMARY JUDGMENT STANDARD**

Summary judgment is appropriate where “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 genuine dispute of material fact exists only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Grant v. Trs. of Ind. Univ.*, 870 F.3d 562, 568 (7th Cir. 2017) (a genuine issue of material fact exists only if there is enough evidence for a jury to return a verdict in favor of the nonmoving party). The moving party bears the initial burden of showing that there is no genuine issue of material fact. Once that burden is met, the burden shifts to the non-moving party to come forward with specific

facts showing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Modrowski v. Pigatto*, 712 F.3d 1166, 1168 (7th Cir. 2013) (once the moving party puts forth evidence showing the absence of a genuine factual dispute, the burden shifts to the non-moving party to present specific facts demonstrating a genuine issue for trial). The nonmoving party may not rely on speculation, conclusory allegations, or denials. *Goodman v. NSA, Inc.*, 621 F.3d 651, 654 (7th Cir. 2010).

In ruling on a motion for summary judgment, the court must view all facts in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor. *Hedberg v. Indiana Bell Tel. Co.*, 47 F.3d 928, 931 (7th Cir. 1995). However, inferences that are supported by only speculation or conjecture will not defeat a summary judgment motion. *McCoy v. Harrison*, 341 F.3d 600, 604 (7th Cir. 2003).

#### IV. ARGUMENT

##### A. *Garfield Plaintiffs Are Entitled to Coverage Under the Insurance Policies*

Defendant Insurer issued Policy No. 6112M39960 to Garfield Aurora I, LLC and Garfield Aurora II, LLC for the policy period December 21, 2018, to December 21, 2019, covering the property located at 460–480 Garfield Avenue in Aurora, Illinois. (SOF ¶ 1- 5). The commercial property insurance policies issued by Defendant Insurer unambiguously provide coverage for property damage, business interruption, and extra expenses caused by a covered peril. The policy provides “all-risk” coverage for: “Direct physical loss of or damage to Covered Property at the premises... caused by or resulting from any Covered Cause of Loss”; “Loss of Business Income due to the necessary suspension of operations caused by direct physical loss of or damage to property”; “Extra Expense” incurred to minimize suspension of business and continue operations; “Increased cost of construction due to enforcement of ordinance or law” following a covered loss.

(SOF ¶ 5, Complaint, ¶31–35, Dkt. 1-1). Under Illinois law, an all-risk policy like this, places the initial burden on the insured to demonstrate a direct physical loss, after which the burden shifts to the insurer to prove that an exclusion applies. *See Country Mut. Ins. Co. v. Bible Pork, Inc.*, 2015 IL App (5<sup>th</sup>) 140211. This case emphasizes that once a direct physical loss is established, the insurer must clearly demonstrate that an exclusion such as “wear and tear” or “neglect” applies to deny coverage.

Here, Plaintiffs have met their burden by establishing a sudden and accidental electrical surge causing physical damage during the policy period. (SOF ¶ 6-8). Federal courts interpreting Illinois law have consistently held that insurance policy terms must be given their plain and ordinary meaning. *American Bankers Ins. Co. v. Shockley*, 3 F.4<sup>th</sup> 322, 327-28 (7<sup>th</sup> Cir. 2021). Moreover, ambiguities in insurance policies must be construed in favor of the insured, particularly in first party disputes. *See Founders Ins. Co v. Munoz*, 237 Ill. 2d 424 (2010); *see also Travelers Ins. Co. v. Eljer Mfg., Inc.*, 197 Ill. 2d 278, 292-93 (2001). Plaintiff did this as evidenced by the testimony of Basara and GNY Vice President of Property Claims, Steve Basara. (SOF ¶ 7-9).

On June 28, 2019, during the policy period, the Subject Property sustained an electrical surge and switchgear failure which damaged the building’s life-safety systems and triggered evacuation. (SOF ¶ 3; Complaint, ¶40–42, Dkt. 1-1). On December 16, 2019, Garfield Plaintiffs submitted a Proof of Loss in the amount of \$627,296.78 for direct property damage, business income loss, extra expense, and ordinance or law costs. (SOF ¶ 9, Proof of Loss) Despite numerous communications, supplemental documentation, and Garfield Plaintiffs’ continuous cooperation, Defendant Insurer failed to issue any determination for over nineteen months. Defendant Insurer finally issued a denial letter on August 3, 2021, invoking general exclusions including “wear and tear,” “deterioration,” “neglect,” and “ordinance or law.” (SOF ¶ 13). The

damage here, tied to a storm related electrical surge, is a classic covered peril. Defendant Insurer's reliance on vague exclusions without explicit policy language is insufficient to deny coverage.

Defendant Insurer's failure to issue a timely or substantive coverage determination, despite receiving prompt notice and ample opportunity to investigate the claim, constitutes a constructive denial that violates the express terms of the policy and undermines the insured's reasonable expectations of coverage. *See Neiman v. Econ. Preferred Ins. Co.*, 357 Ill. App. 39 786, 794-95, 829 N.E.2d 907, 914-15 (1<sup>st</sup> Dist. 2005) (finding a Section 155 violation where the insurer ignored factual documentation and failed to provide a substantive response); *see also Cramer v. Ins. Exch. Agency*, 174 Ill. 2d 513, 525 (1996) (recognizing an insurer's duty to deal fairly and in good faith with insureds); *see also General Agents Ins. Co. of Am. v. Midwest Sporting Goods Co.*, 215 Ill. 2d 146, 159 (2005) (discussing insurer obligations and principles of policy interpretation). Illinois courts consistently recognize that insurance policies are contracts of adhesion and must be interpreted in favor of the insured, particularly where policy language is ambiguous. *See Outboard Marine Corp. v. Liberty Mut. Ins. Co.*, 154 Ill. 2d 90, 108-09 (1992) (holding that ambiguities in insurance policies are construed strictly against the insurer and in favor of the insured). It is important to note that under Illinois law, an insurer's failure to provide a timely or legitimate basis for denying coverage, even if it relies on some plausible evidence, can constitute an unreasonable and vexatious refusal to pay within the meaning of Section 155. *Citizens First Nat'l Bank v. Cincinnati Ins. Co.*, 200 F.3d 1102, 1110 (7th Cir. 2000).

The policies in question contain no exclusions applicable to the type of property damage and loss at issue here, and Defendant Insurer's position that the losses are not covered lacks support in the policy language or the law. (SOF ¶ 2-5). The Seventh Circuit has firmly established that when the language of an insurance policy reasonably causes an insured party to believe that

coverage is provided, the insurer has a duty to promptly and clearly communicate any contrary position. If the insurer fails to provide a timely or substantive explanation for denying coverage, such a denial is deemed improper and inconsistent with the insurer's obligations under the policy. This principle was articulated in *BASF AG v. Great Am. Assur. Co.* where the court emphasized that insurers cannot simply withhold meaningful coverage determinations or rely on ambiguous policy language to evade their responsibilities. 522 F.3d 813, 821-23 (7<sup>th</sup> Cir. 2008). Defendant Insurer's continued delay and obfuscation run counter to this precedent. It failed to deny the case until after their had was forced with this Complaint. (SOF ¶ 13).

The uncontested factual record demonstrates that qualified individuals with direct knowledge of the conditions, including construction professionals, property personnel, uniformly attributed the damage to a power surge caused by a severe storm, which in some accounts included a lightning strike. (SOF ¶ 6-8, 10). For example, Louis Giordano, the property manager for Garfield Aurora, testified that on the morning of June 28, 2019, "the power went out. It was a bad storm," and when power was eventually restored late that evening, it was done improperly, causing only partial restoration and resulting in failure of "critical systems, like, the elevators and...the sump pump." (SOF ¶ 6). He further recalled that the "incident happened" around 10p.m., when the power surge occurred, directly linking the damage to the storm and restoration failure. *Id.*

Similarly, Ron Basara, a former licensed commercial insurance adjuster and construction project manager, testified that the power outage was caused when "a transformer on a pole on the property was struck by lightning," which "took out the power to the building," crippling the elevators, fire alarms, and other safety systems, ultimately prompting the City to evacuate the tenants. (SOF ¶ 7). Basara further confirmed that following a site inspection with Crawford Adjusters, there was a "mutual agreement" among them that "the storm that took place" on June

28, 2019, was “the cause of the loss,” based on their collective review of the electrical gear, alarm panel, and transformer (SOF ¶ 8). These accounts provide consistent and credible support that the resulting damage was both sudden and accidental, precisely the type of loss contemplated by the policy’s all risk coverage. Notably, representatives of Defendant Insurer did not undertake any meaningful investigation to contradict this causal sequence and instead relied on generalized exclusions without evaluating the actual facts. (SOF ¶ 10-11). Under Illinois law, allegations that an insurer failed to reasonably investigate and handle claims may support a breach of contract claim, particularly where the insurance policy includes a retrospective premium feature. *Cas. Ins. Co. v. Hill Mech. Group*, 323 Ill. App.3d 1028 (1<sup>st</sup> Dist. 2001) (the court found that the insured’s detailed allegations, such as failure to investigate claims, overpayment, and improper claim handling, were factually sufficient to state a cause of action for breach of contract). Here, Defendant Insurer’s failure to direct its consultants to evaluate causation or coverage before denying the claim falls below the required standard, evidencing bad faith.

Although an insurer’s failure to conduct a timely and reasonable investigation may support a finding of vexatious and unreasonable conduct under Section 155, the standard is a high one. For example, in *Cramer* the Illinois Supreme Court emphasized that while Section 155 allows for penalties when an insurer’s conduct is unreasonable, the statute is not a license to punish insurers for every delay or bad decision, only conduct that is willful or without reasonable cause. 174 Ill.2d 513 at 525. Likewise, in *Citizens First*, the Court acknowledged concerns with the insurer’s delay in asserting certain defenses, but ultimately vacated the Section 155 award, finding that the insurer had asserted reasonable, if imperfectly timed, defenses based on an ongoing factual investigation. 200 F.3d 1102 at 1110-11. These cases highlight that under Section 155, liability does not attach merely because a denial is wrong, it must be unreasonably delayed or wholly unsupported. Unlike

*Citizens First*, where the court found a “bona fide dispute,” Defendant Insurer had clear notice of the loss, credible corroborating accounts, and ample time to respond, yet delayed its position for over nineteen months with no adequate explanation, conduct more clearly falling within the scope of vexatious and unreasonable that Section 155 aims to deter.

In sum, the clear and unambiguous policy language, the credible and consistent accounts of a covered peril, and the absence of any valid exclusion all confirm that the Plaintiffs are entitled to coverage. Defendant Insurer’s failure to timely investigate or acknowledge the loss, coupled with its reliance on vague and unsupported exclusions, not only violates the express terms of the policy but also contravenes well-established principles of Illinois insurance law. Accordingly, the record compels a finding that coverage exists as a matter of law, and Defendant Insurer’s prolonged inaction and unsupported denial support entry of summary judgment in Garfield Plaintiffs’ favor.

*B. Defendant Insurer Breached Its Contractual Obligations*

Under Illinois law, a claim for breach of contract requires the plaintiff to establish: (1) the existence of a valid and enforceable contract; (2) substantial performance by the plaintiff; (3) a breach by the defendant; and (4) resulting damages. *Reger Dev., LLC v. Nat’l City Bank*, 592 F.3d 759, 764 (7th Cir. 2010).

In this case, all four elements are plainly met. Garfield Plaintiffs entered into valid and enforceable commercial property insurance contracts with Defendant Insurer. Garfield Plaintiffs performed their contractual obligations in full by paying all required premiums and complying with all post loss conditions, including the timely submission of claims and documentation in support thereof. Defendant Insurer, by contrast, materially breached its obligations by failing to issue a timely or meaningful coverage determination, despite ample opportunity and repeated notice. It failed to undertake any causation analysis or good faith inquiry into the circumstances of

the claim and instead defaulted to a denial premised solely on general exclusions. (SOF ¶ 10-11).

This inaction amounts to a constructive denial of coverage and a violation of the insurer's duty to deal fairly and in good faith. *See Cramer*, 174 Ill. 2d 513 (1996) (holding that unreasonable delay or refusal to pay may constitute bad faith and give rise to liability under Section 155 of the Illinois Insurance Code. Similarly, the court in *Neiman* found a Section 155 violation where the insurer ignored factual documentation and delayed payment for no legitimate reason supporting a finding of constructive delay directly parallel to Defendant Insurer's conduct here. 357 Ill. App. 3d 786 (1<sup>st</sup> Dist. 2005).

Moreover, the Illinois Supreme Court has long recognized that ambiguous policy language, particularly when relied on to deny a valid claim, frustrates the insured's reasonable expectations. *See Outboard Marine Corp*, 154 Ill.2d at 108–09. Defendant Insurer's breach has directly caused substantial harm. Garfield Plaintiffs have suffered extensive physical damage to their insured property, prolonged business interruption, lost revenue, and significant out-of-pocket expenses, all of which the insurance policies were expressly intended to cover. Defendant Insurer's continued refusal to honor its contractual obligations has deprived Garfield Plaintiffs of the very benefit of their bargain, defeating the essential protective purpose of commercial insurance coverage. This is not the case of mere delay or administrative oversight. Rather, it reflects a willful failure to perform, an abdication of the insurer's core obligations. Where an insurer fails to even attempt an informed evaluation of the claim, it fails not only its legal duties, but the foundational premise of coverage itself.

Courts have recognized that when an insurer fails to timely and reasonably investigate a valid claim, it may be subject to penalties under Section 155. *See Citizens First Nat'l Bank*, 200 F.3d at 1110 (discussing standards for vexatious and unreasonable conduct under Section 155,

though ultimately reversing award). That same principle applies here, where Defendant Insurer had ample notice and documentation but delayed a coverage determination of over nineteen months. Similarly.

In *Outboard Marine Corp*, the Illinois Supreme Court emphasized that when an insurer's conduct creates ambiguity or leaves a claim unresolved without justification, courts must construe the policy in favor of the insured. 154 Ill.2d at 108-09. Defendant Insurer's reliance on generic exclusions, despite having access to credible, corroborating evidence, reflects the same type of conduct condemned in *Outboard Marine Corp*. The failure to make a formal determination is underscored by Defendant Insurer's own representatives. Steven Baroncini, Vice President of Property Claims for Defendant Insurer, admitted that Defendant Insurer never made a final determination as to what caused the damage and acknowledged that the insurer never ruled out lightning, a storm or a power outage, which were the events initially reported by the Garfield Plaintiffs, as potential causes of the loss: "Q. GNY never made a determination as to what caused the damage on the Garfield property that resulted in the claim; is that right? A. Other than how it was reported and the lightning verification check that we have, we did not receive anything specifying exactly what happened." (SOF ¶ 11).

These admissions confirm that Defendant Insurer did not meaningfully evaluate the substance of the claim and relied exclusively on the initial loss and lightning verification report without undertaking any meaningful investigation to contradict the covered cause. Such admissions strengthen the conclusion that Defendant Insurer failed to substantiate its denial or even attempt to evaluate causation. As both *Citizens First* and *Outboard Marine Corp*. demonstrate, an insurer may not escape liability by deflecting or delaying resolution when the facts support coverage. Accordingly, Defendant Insurer's persistent and unjustified failure to fulfill its

contractual obligations despite clear notice, substantial performance by Garfield Plaintiffs, and ample opportunity to investigate, constitutes a textbook breach of contract under Illinois law, justifying judicial intervention and appropriate relief.

*C. Defendant Insurer's Conduct Warrants Statutory Relief Under 215 ILCS 5/155*

Under 215 ILCS 5/155, an insured may recover attorney's fees and additional damages when an insurer's refusal to pay a claim is vexatious and unreasonable. This statutory remedy applies when the insurer unreasonably delays payment, fails to properly investigate a claim, or otherwise compels litigation to recover benefits that are contractually owed. Under Illinois law, an insurer's failure to promptly investigate a claim or its reliance on shifting justifications for denial may also warrant statutory penalties under Section 155. *Employers Ins. v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 160 (1999) (finding insurer's delayed investigation and refusal to defend was "vexatious and unreasonable as a matter of law" under Section 155).

This abdication of basic investigative responsibility reflects a systemic refusal to engage with the claim and falls clearly within the type of insurer misconduct that Illinois Courts have consistently found actionable under Section 155. In *Ehlco*, the Illinois Supreme Court held that an insurer's failure to promptly investigate and its reliance on changing and unsupported justifications for denial could give rise to statutory penalties. 186 Ill.2d at 159-61. The same logic applies here. Defendant Insurer not only had the opportunity but the contractual duty to conduct a thorough, good faith inquiry into the loss. They were presented with detailed loss documentation, credible witness accounts, and a timeline of events supported by both internal records and external confirmations. Instead, they opted to ignore this evidence and delay resolution without explanation, creating the very kind of unjust hardship Section 155 was enacted to address.

By refusing to pay or clearly deny the claim, Defendant Insurer has effectively forced

Garfield Plaintiffs to litigate in order to obtain the benefits owed under their policy. This has caused significant hardship, including the inability to repair property damage, resume business operations, and access critical funds. Such compulsion of litigation through inaction and non[performance is an abuse of the insurer-insured relationship. Accordingly, Defendant Insurer's misconduct is not only a breach of contract, it is the precise type of vexatious and unreasonable conduct that Section 155 was designed to remedy. Garfield Plaintiffs are therefore entitled not only to contractual damages owed under the policy, but also to attorney's fees and statutory penalties under section 155 for Defendant Insurer's deliberate and unjustified mishandling of the claim.

**V. CONCLUSION**

For the foregoing reasons, Plaintiffs Garfield Aurora I, LLC and Garfield Aurora II, LLC respectfully request that this Court grant partial summary judgment finding that coverage exists for this claim and set the matter for trial on the appropriate damages.

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**CERTIFICATE OF SERVICE**

I hereby certify that on **June 27, 2025**, I electronically filed the foregoing **PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT** using this Court's EM/ECF service which will provide copies to all counsel of record registered to receive CM/ECF notification.

/s/ Amir R. Tahmassebi