IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-00900-GPG-STV

DHANESH RANJITKAR AND NIRMALA RANJITKAR,

Plaintiffs,

v.

OWNERS INSURANCE COMPANY,

Defendant.

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT OWNERS INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT [DOC. 25]

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Dhanesh Ranjitkar and Nirmala Ranjitkar, Plaintiffs in the instant action, and file this their Response in Opposition to Defendant Owners Insurance Company's Motion for Summary Judgment [Doc. 25]. In support thereof, Plaintiffs state the following:

INTRODUCTION

Defendant Owners Insurance Company ("OIC") filed a Motion for Summary Judgment on April 17, 2026 [Doc. 25]. Defendant's motion should be denied. Genuine disputes of material fact exist on every element of Plaintiffs' breach of contract, common law bad faith, and statutory bad faith claims. Defendant's motion ignores critical factual issues, misapplies Colorado insurance law, and rests on disputed characterizations of Plaintiffs' performance of the contract and the extent of covered damage.

The Ranjitkar's home sustained significant hail and wind damage on May 10, 2023. NOAA data confirm hailstones of up to 3 inches in diameter struck the property. Plaintiffs' expert, Brandon Allen, an independent general adjuster and HAAG-certified roof inspector who has adjusted between 8,000 and 10,000 storm damage claims, personally inspected the property and documented cracked and chipped concrete tile, damaged gutters, windows, doors, and soft-metal vents. He concluded that the Westile 1000 concrete tile roof—a discontinued product no longer in production since 2014—requires full replacement, and that the total covered loss is $86,085.27 in replacement cost value and $64,277.22 in actual cash value.[1] Defendant has paid approximately $12,988.84 in actual cash value and has refused to pay replacement cost value. That substantial disparity creates a triable issue of fact as to each claim.

Defendant's Motion asks the Court to improperly weigh evidence, credit Defendant's cherry-picked expert opinions, and resolve disputed issues of fact regarding causation, scope, and claim handling. However, those determinations are reserved for the jury. Contrary to Defendant's assertion that all covered damages were timely and fully paid, the evidence in fact reflects a pattern of under-scoping and undervaluing the claim, delay, and resistance to reconsideration that ultimately resulted in additional payments only after litigation pressure. Plaintiffs have produced evidence—most notably the expert report and testimony of Brandon Allen, Plaintiff's expert—establishing that the property sustained significant hail damage, that spot repairs are not feasible, and that OIC's adjustment undervalued and under-scoped the loss. Viewing the evidence in the light

[1] **Exhibit S**, Expert Report of Brandon Allen at p. 1-2.

most favorable to Plaintiffs, genuine disputes of material fact preclude summary judgment.

RESPONSE TO STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied. Defendant mischaracterizes Plaintiffs' handling of the roof. Plaintiffs' expert Brandon Allen inspected the property and found that the "exterior appeared to be in good condition at the time of the inspection," with no notation of pre-existing maintenance deficiencies affecting covered damage. The hail damage observed was caused by the May 10, 2023 hailstorm, not by any failure to maintain the roof.[2]

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

[2] **Id**. at p. 2; 4-5.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Denied. Plaintiffs deny that the Letter of Representation contained no new information material to the claim. The letter placed OIC on formal notice that Plaintiffs were represented by counsel and were disputing the adequacy of Defendant's coverage determinations.[3]

21. Admitted.

22. Admitted.

23. Admitted.

24. Denied. Plaintiffs admit that the email states that a full roof replacement is unwarranted but dispute this statement. Plaintiffs' expert has concluded that the roof requires full replacement due to the hail damage caused by the storm.[4]

25. Admitted.

26. Admitted.

STATEMENT OF ADDITIONAL UNDISPUTED FACTS

Plaintiffs identify the following additional material facts that preclude summary judgment:

[3] **Exhibit L**, Letter of Representation.
[4] **Exhibit S**, at p. 6.

1. NOAA's Severe Weather Data Inventory, using Next Generation Radar (NEXRAD), recorded hail up to 3 inches in diameter with 100% probability in Aurora, Colorado, on May 10, 2023.[5]

2. Westile ceased manufacturing concrete roofing tile in 2014.[6]

3. In addition to the roof, Plaintiffs' expert observed and documented hail damage to windows and window screens, the exterior door, the garage door, gutters, siding, and the HVAC condenser case—none of which were adequately compensated by OIC's payments on the claim.[7]

4. Plaintiffs' expert's total replacement cost value estimate for covered damage is $86,085.27, against which Defendant has paid approximately $12,988.84 in ACV benefits across all coverage lines, leaving more than $73,000 in covered replacement cost benefits unpaid and over $46,000 in covered actual cash value benefits unpaid.[8]

ARGUMENT

I. Legal Standard

Summary judgment is appropriate when a "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). For summary judgment, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477

[5] **Id.** at p. 2-3.
[6] **Id**. at p. 4.
[7] **Id**. at p. 5-6.
[8] **Id**. at p. 1; 8.

U.S. 242, 251-52 (1986). A fact is material when it "might affect the outcome of the suit." *Anderson*, at 248. The Court, in deciding a motion for summary judgment, must "view the evidence and draw all reasonable inferences therefrom in the light most favorable to the party opposing summary judgment." *Atl. Richfield Co. v. Farm Credit Bank*, 226 F.3d 1138, 1148 (10th Cir. 2000).

II. Genuine Issues of Material Fact Preclude Summary Judgment on Plaintiffs' Breach of Contract Claim

To survive summary judgment on a breach of contract claim, Plaintiffs need only establish a genuine dispute regarding: (1) the existence of a contract; (2) performance or excuse; (3) breach; and (4) damages. *Western Distributing Co. v. Diodosio*, 841 P.2d 1053, 1058 (Colo. 1992). All elements are supported by evidence on the record, and each of Defendant's three bases for dismissal—failure to prove coverage, failure to complete repairs, and failure to submit a proof of loss—fails as a matter of law or presents a jury question at minimum.

The existence of the insurance contract is not in dispute. The Policy is an open-peril HO-3 form covering all risk of direct physical loss to the dwelling and other structures, subject only to specifically listed exclusions.[9] Plaintiffs need only show a covered peril caused physical loss; the burden then shifts to Defendant to prove an exclusion applies. *Rocky Mt. Prestress, LLC v. Liberty Mut. Fire Ins. Co.*, 960 F.3d 1255, 1260 (10th Cir. 2020). Hail is a covered peril. The May 10, 2023 storm produced confirmed hailstones of up to 3 inches in diameter. Plaintiffs' expert, Brandon Allen, personally inspected the

[9] **Exhibit A**, at p. 19.

property and documented cracked and chipped concrete tile across all four roof slopes, dented soft-metal vents, and hail damage to gutters, windows, the exterior door, the garage door, and the HVAC condenser. Defendant's own First Notice of Loss[10] records the claim as "hail damage to home including roof, windows, siding, etc." which confirms Defendant's own contemporaneous acknowledgment that a covered loss occurred. Defendant paid ACV benefits, which is itself a concession that some covered loss exists. The only disputed question is how much. That is a question for the jury.

The policy covers hail and wind damage, and Defendant's own partial payments concede that some coverage was owed. The central dispute—whether Defendant properly identified and paid the full covered loss—is resolved by Mr. Allen's expert finding that $86,085.27 in RCV coverage and $64,277.22 in ACV coverage was owed despite the $12,988.84 that was paid by OIC. That gap of at least $46,000 in unpaid benefits creates a genuine issue of material fact that must be decided by the jury.

To the extent Defendant attempts to argue that the policy's mismatch endorsement bars full replacement of the roof, this argument also fails. The policy includes Endorsement 57984 How Losses Are Settled Amendatory – Undamaged Siding or Roofing), which limits payment for undamaged material needed to match repaired sections where the mismatch results from "color change, fading, oxidizing, wear and tear, weathering, marring, scratching or deterioration, or obsolescence or discontinuation."[11] Even if "obsolescence or discontinuation" facially applies to Westile's exit from the roofing market, the endorsement by its terms addresses a situation where damaged portions are

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[10] **See generally Exhibit F**.
[11] **Exhibit A**, at p. 47.

repaired and undamaged portions need to match. Here, because the Tile Institute directs that damaged tile should not be reinstalled, there is no repair scenario at all.[12] The entire roof requires replacement due to the hail damage itself and the impossibility of sourcing matching tile of like kind and quality. The endorsement does not override the fundamental obligation to restore the property to pre-loss condition when the damaged material cannot be repaired or matched.

Defendant argues that Plaintiffs cannot recover RCV benefits because they did not complete repairs within two years of the date of loss. The policy requires completion of repair or replacement "within two years after the date of loss," and notification within 30 days of completion.[13] Defendant's argument that Plaintiffs failed to satisfy conditions precedent fails for two reasons. First, Defendant waived strict compliance with the proof of loss and repair completion conditions by engaging in years of substantive claim handling—by issuing four separate payments, reviewing contractor supplemental estimate, and conducting detailed claim and coverage correspondence—without conditioning continued claim handling on those requirements. Second, Plaintiffs' failure to complete repairs was caused directly by Defendant's underpayment which excused performance.[14]

The undisputed record establishes why repairs were not completed. Defendant paid only approximately $13,000 of the more than $86,000 Plaintiffs' expert estimated was owed. Mr. Ranjitkar testified unequivocally that contractors were waiting for the insurance

[12] **Exhibit S**, p. 152-153.
[13] **Exhibit A**, at p. 26-27.
[14] **Complaint [Doc. 4]** at ¶ 39.

process to complete before starting work, and that he was "waiting for" the insurance company.[15] Colorado law does not permit an insurer to deny a condition precedent when its own underpayment caused the failure. Defendant cannot withhold the funds needed to make repairs and then invoke the repair completion condition to deny RCV benefits. Whether Defendant's underpayment excused Plaintiffs' nonperformance is a fact-intensive question for the jury.

The record contains evidence demonstrating additional covered hail damage beyond what Defendant initially acknowledged. Plaintiffs' expert, Brandon Allen, with his report and testimony, provides extensive evidence establishing that Plaintiff's property suffered covered storm damage during the policy period, as well as the fact that OIC failed to account for some of that damage—specifically, the roof replacement and exterior.[16] Mr. Allen opined that the storm occurring on May 10, 2023 caused damage to Plaintiffs' property, which requires the roofing system to be replaced as well as repairs to the windows, window screens, exterior door, garage door, and gutters.[17] OIC conducted an unreasonable investigation and ignored evidence of coverage when it denied Plaintiffs' claim for the roof replacement. Whether replacement is required to satisfy the policy obligations to repair or replace damaged property is a material fact issue.

Mr. Allen's report and testimony directly contradict OIC's assertion that the roof sustained only minimal or non-covered damage. This evidence is more than sufficient to create a genuine dispute of material fact as to the scope and value of the covered loss.

[15] **Exhibit B**, 10:25.
[16] **See generally Exhibit S**.
[17] ***Id***. at p. 4-6.

Competing evidence regarding causation and repair methodology presents a classic jury question. *Etherton v. Owners Ins. Co.,* 35 F.Supp.3d 1360 (D. Colo. 2014), aff'd 827 F.3d 1257 (10th Cir. 2016).

III. Summary Judgment is Improper on Plaintiffs' Statutory Bad Faith Claims

Defendant argues that Plaintiff's statutory bad faith claims under C.R.S. §§ 10-3-1115 and 1116 fail as a matter of law. This argument misapplies Colorado law.

A "person engaged in the business of insurance shall not unreasonably delay or deny payment of a claim for benefits owed to or on behalf of any first-party claimant." C.R.S. § 10-3-1115(1)(a); *State Farm Mut. Auto. Ins. Co. v. Fisher*, 418 P.3d 501, 504 (Colo. 2018). "[A]n insurer's delay or denial was unreasonable if the insurer delayed or denied authorizing payment of a covered benefit without a reasonable basis for that action." C.R.S. § 10-3-1115(2); *Fisher*, 418 P.3d at 504. The statute requires only that the denial or delay be "reasonable"—no reckless disregard is required. *Kisselman v. Am. Fam. Mut. Ins. Co.*, 292 P.3d 964, 972 (Colo. App. 2011). The remedy under § 10-3-1116(1) is two times the covered benefit plus reasonable attorney fees and costs.

Plaintiffs quantify the benefit owed as $81,085.27 with application of the deductible (RCV), or at minimum $59,277.22 (ACV net of the deductible), versus total payments of approximately $12,988.40. Defendant's asserted bases for denying full benefits is that" (a) the roof damage does not warrant full replacement; and (b) Plaintiffs failed to satisfy policy conditions. As demonstrated throughout this response, both positions are factually disputed. Whether Defendant's bases for withholding benefits was reasonable—in light of the available weather data, the tile discontinuation, the multiple contractor estimates, etc—is a question of fact for the jury.

Plaintiffs' Answer to Interrogatory No. 14 documents that Defendant has been on notice of the full scope of the claimed damage since at least late 2023 when Plaintiffs' contractor submitted supplemental estimates.[18] Continued delay in fully paying a covered benefit, without a defensible basis, violates the statute regardless of whether the conditions were formally satisfied.

For liability imposed under C.R.S. §§ 10-3-1115 and 10-3-1116, while a claim being "fairly debatable" is probative, it is not dispositive. "[A]n insurer could unreasonably delay or deny a claim for benefits even if that claim is fairly debatable." *Etherton v. Owners Ins. Co.*, 829 F.3d 1209, 1226-27 (10th Cir. 2016). The reasonableness of Defendant's actions in evaluating Plaintiff's claim, even if "fairly debatable," remains a question of fact for a jury to decide.

Defendant incorrectly suggests that Plaintiffs must present claims handling expert testimony to survive summary judgment. While such testimony may be helpful, it is not required where documentary and circumstantial evidence support an inference of unreasonableness.

Defendant's reliance on *El Dueno, LLC v. Mid-Century Ins. Co.*, No. 24-1110, 2025 WL 1540329 (10th Cir. May 30, 2025), is misplaced. Here, Defendant's own payments concede that covered benefits exist. The dispute is whether the full covered amount has been paid. The statutory prohibition on unreasonable delay applies with full force to an

[18] Exhibit C, at p. 8.

insurer that pays a fraction of a covered loss and refuses to pay the remainder without a reasonable investigation-supported basis.

Whether Defendant's conduct was reasonable under the circumstances is a question for the jury. *Sanderson v. Am. Family Mut. Ins. Co.*, 251 P.3d 1213, 1217 (Colo. App. 2010). A genuine dispute exists as to whether OIC's actions were reasonable, precluding summary judgment on Plaintiffs' statutory bad faith claims. Summary judgment is a drastic measure, one which removes claims from the province of a jury. Summary judgment is not appropriate in this case, as there exist genuine issues of material fact that should be presented to a jury. Plaintiffs' claims of common law and statutory bad faith are supported by genuine issues of reasonableness on the part of Defendant.

IV. Plaintiffs' Common Law Bad Faith Claim Also Presents Fact Questions

In every insurance contract, there is an implied covenant of good faith and fair dealing. *Sanderson*, at p. 1217. "This duty of good faith and fair dealing continues unabated during the life of an insurer-insured relationship, including through a lawsuit or arbitration between the insured and the insurer." *Id*. In the first-party contract, as here, the common law tort of bad faith breach of insurance contract requires the insured to prove that (1) the insurer's conduct was unreasonable under the circumstances, and (2) the insurer either knowingly or recklessly disregarded the validity of the insured's claim. *Goodson v. American Standard Ins. Co. of Wisconsin*, 89 P.3d 409, 415 (Colo. 2004).

As to unreasonableness, Mr. Allen's expert report demonstrates that Defendant's assigned adjusters failed to properly identify and quantify covered hail damage to the roof, gutters, windows, doors, and HVAC condenser, despite access to the same NOAA weather data and HAAG guidelines that establish and corroborate the damage. Defendant's denial of the full roof replacement ignored Westile's well-known manufacturing discontinuation. This evidence requires the issue of Defendant's reasonableness to be decided by the jury.

As to reckless disregard, the magnitude of underpayment and Defendant's continued refusal to authorize full replacement of the roof despite multiple communications from Plaintiffs and Plaintiffs' representatives that a full replacement was required support an inference of reckless disregard. Whether that inference is warranted is a question for the jury, not for resolution on summary judgment.

Defendant persisted in its underpayment position despite receiving multiple contradictory estimates. After Defendant's initial payments, Plaintiffs submitted Colorado Windows and Restoration's supplemental estimate for windows alone totaling $18,532.25 (which Defendant acknowledged in December 2023 and rejected without apparent substantive analysis), Ninja Roofs' inspection findings (2024), and ultimately Plaintiffs retained expert report (October 2025) estimating $86,085.27 in covered damage. At each juncture, Defendant maintained its original position with no meaningful reexamination. The Tenth Circuit has recognized that an insurer's failure to adequately reconsider a coverage determination in the face of contrary evidence supports a bad faith inference—basically insurers may challenge claims that are fairly debatable, all that means is that it may not defend one that is not fairly debatable. *See Sanderson v. American Family Mut. Ins. Co.*, 251 P.3d 1213, 1217-18 (Colo. App. 2010).

Plaintiff has presented evidence that Defendant undervalued the loss, ignored or discounted evidence of functional damage and inability to repair, delayed issuing proper payment, and relied on post hoc expert opinions to justify earlier decisions. From this evidence, a reasonable jury could conclude that Defendant knowingly or recklessly disregarded the validity of the claim.

In light of the above and the conduct and position undertaken by OIC, there exists an issue of material fact regarding: (1) Defendant's unreasonable conduct under the circumstances, and (2) Defendant's knowing or reckless disregard of the validity of The Ranjitkars' claim.

CONCLUSION

Defendant's Motion improperly asks the Court to resolve factual disputes and weigh competing evidence. Because genuine issues of material fact exist as to coverage, causation, delay, and reasonableness, Defendant's Motion for Summary Judgment should be denied in its entirety. Plaintiffs respectfully request the Court wholly deny Defendant's Motion for Summary Judgment. Plaintiffs seek all such further and additional relief to which they may be justly entitled.

DATED this 28th day of May, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2026, a true and correct copy of the foregoing was served on all counsel of record, via the Court's electronic filing system or as indicated below, pursuant to Federal Rules of Civil Procedure 5(b), as follows:

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