IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 24-cv-02798-PAB-MDB

ANTHONY PRICE,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY COMPANY,

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S MOTION FOR SUMMARY JUDGMENT [DOC. 26]

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Anthony Price, Plaintiff in the instant action and files this his Response to Defendant State Farm Fire and Casualty Company's Motion for Summary Judgment [Doc. 26]. In support thereof, Plaintiff states the following:

INTRODUCTION

Defendant State Farm Fire and Casualty Company ("State Farm") filed a Motion for Summary Judgment on December 15, 2025 [Doc. 26]. 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. Plaintiff has produced evidence—most notably the expert report and testimony of Brandon Allen, Plaintiff's expert—establishing that the property sustained functional hail damage, that spot repairs are not feasible, and that State Farm's adjustment undervalued and under-scoped the loss. Viewing the evidence in the light most favorable to Plaintiff, genuine disputes of material fact preclude summary judgment.

RESPONSE TO STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Plaintiff admits the existence of the Policy but denies Defendant's implication that coverage was fully and properly applied. The Policy provides coverage for direct physical loss caused by a covered peril but whether Defendant fully paid for all covered hail damage remains disputed.[1]

2. Admitted.

3. Admitted.

4. Admitted.

5. Plaintiff disputes any implication that the timing of the claim report undermines coverage or causation. Defendant has identified no prejudice resulting from the date of reporting.

6. Admitted.

7. Admitted to the extent that this is what Mr. Zurbriggen noted in the claim file.

8. Plaintiff denies that the November 15, 2023 estimate represented full payment of the covered damage. Defendant later issued a supplemental payment, confirming the initial estimate was incomplete.[2]

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[1] **Exhibit A**, Policy Losses Insured and Losses Not Insured Pages.
[2] **Exhibit I**, SF Payment Letter to Plaintiff.

9. Admitted to the extent that this is what the letter states, but Plaintiff denies the assertion that the damage to the roof and stucco was solely attributable to wear, tear, or workmanship. Plaintiff has produced evidence relating the observed damage to hail impacts from the June 16, 2023 storm.[3]

10. Admitted.

11. Plaintiff denies that the photographs submitted by Optimum Roofing failed to show hail damage. Defendant rejected the photographs without conducting a reinspection or field verification.[4]

12. Admitted.

13. Plaintiff denies Defendant's characterization of the demand letter as unsupported by objective evidence. The demand included a contractor estimate and photographs identifying hail-related damage requiring full roof replacement.[5]

14. Admitted.

15. Admitted.

16. Plaintiff denies that the stucco damage was caused by improper workmanship. Plaintiff's evidence supports that hail impacts caused chipping and fracturing consistent with storm damage.[6]

[3] **Exhibit J**, Expert Report of Brandon Allen dated June 13, 2025.
[4] **Exhibit E**, SF Denial for 2nd Inspection Letter to Plaintiff.
[5] **Exhibit G**, Plaintiff's Demand Letter.
[6] **Exhibit J**, Expert Report of Brandon Allen dated June 13, 2025, p. 5, 44, 48-50, 52-60.

17. Plaintiff denies that the supplement payment fully compensated for covered damage. Plaintiff contends that the full roof replacement and additional exterior repairs remain unpaid.[7]

18. Admitted.

19. Admitted to the extent that Plaintiff did not submit a pre-suit engineering report, but Plaintiff denies the implication that the absence of a pre-suit engineering report negates coverage or bad faith. Plaintiff has no duty to submit an engineering report at any point and Defendant's duty to reasonably investigate existed independently.[8]

STATEMENT OF ADDITIONAL UNDISPUTED FACTS

1. The Policy does not impose a numerical threshold of damaged shingles as a prerequisite for coverage or roof replacement.[9]

2. The initial inspection by Mr. Zurbriggen did not include brittle testing, or analysis of repairability consistent with industry standards for hail damage assessment to the roof.[10]

3. State Farm denied Plaintiff's request for a second inspection before retaining an engineering and without performing any additional on-site investigation.[11]

4. State Farm issued additional payment only after Plaintiff retained counsel and submitted a formal demand.[12]

5. State Farm never advised Plaintiff that full roof replacement could be warranted if repairability, brittleness, or matching concerns were present.

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[7] *Id*. at p. 1-16.
[8] **Exhibit K**, Your Duties After Loss Policy Page.
[9] **See generally Exhibit L**, Full Copy of Policy.
[10] **Exhibit C**, SF Claim File Notes, p. 15.
[11] **Exhibit E**, SF Denial for 2nd Inspection Letter to Plaintiff.
[12] **Exhibit I**, SF Payment Letter to Plaintiff.

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 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 Plaintiff's Breach of Contract Claim

Defendant contends that Plaintiff cannot establish breach of contract because Defendant allegedly paid all covered damages. This argument hinges entirely on accepting Defendant's factual narrative and "expert" opinions while disregarding contrary evidence. Defendant's argument rests entirely on disputed facts that must be resolved by the jury.

a. Plaintiff Has Produced Competent Expert Evidence of Additional Covered Damage

The record contains evidence demonstrating additional covered hail damage beyond what Defendant initially acknowledged. Plaintiff's expert, Brandon Allen, with his report and testimony provide extensive evidence establishing that Plaintiff's property suffered covered storm damage during the policy period as well as the fact that State Farm failed to account for some of that damage—specifically, the roof and exterior stucco.[13] Mr. Allen opined that the storm occurring on June 16, 2023 caused damage to Plaintiff's property which requires the roofing system to be replaced as well as the exterior stucco to be repainted.[14] Defendant has separately moved to strike Mr. Allen's opinions, and Plaintiff has responded to Defendant's motion to exclude. For the reasons set forth in Plaintiff's Response to Defendant's Motion to Exclude the Testimony of Brandon Allen Pursuant to Fed. R. Evid. 702 [Doc. 28], Mr. Allen should be allowed to render his opinions on cause of the damages, scope, and cost of repair. State Farm conducted an unreasonable investigation and ignored evidence of coverage when it denied Plaintiff's claim for the roof replacement and stucco repairs.

State Farm's Motion assumes that any hail damage could be addressed through spot repairs. Mr. Allen opinions otherwise. Based on his inspection and experience, Mr. Allen concluded that spot repairs would not restore the roof to its pre-loss condition due to functional impairment, uniformity concerns, and the inability to repair damaged shingles without compromising surrounding materials.[15] 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 State Farm'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. 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).

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[13] **See generally Exhibit J**.
[14] *Id*. at pp. 1-5.
[15] *Id*. at pp. 4-5.

b. Defendant's Reliance on an Engineer Does Not Eliminate Factual Disputes

Defendant repeatedly asserts that it reasonably relied on its retained engineer. However, reliance on an "expert" does not entitle an insurer to judgment as a matter of law where the expert's opinions are disputed or incomplete. The evidence shows that State Farm issued supplemental payment after its initial adjustment which undermines its claim that its original scope was complete. A reasonable jury could conclude that State Farm breached the policy by failing to pay the full amount owed for covered damage.

Courts in this District routinely deny summary judgment where insurers rely on engineering opinions that conflict with other competent evidence. The Court may not resolve this dispute at summary judgment by choosing one expert over another.

III. Summary Judgment is Improper on Plaintiff's 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 misstates Colorado law.

a. Reasonableness and Delay are Questions of Fact

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.

In this case, Plaintiff submitted his request for reinspection and reevaluation to Defendant on January 11, 2024. This included his contractor's estimate and photographs evidencing the scope of the hail damage to the property as well as the cost of repair. On January 15, 2024, Defendant advised via letter that it was denying Plaintiff's request for reinspection. It is apparent, at this time, Defendant did not deem it necessary to engage an engineer to evaluate this claim. Instead, only after having received a Letter of Representation and a Demand Letter from Plaintiff's counsel, Defendant's tune changed—despite no new information being presented besides the fact that Plaintiff had hired counsel—and it thought it prudent to retain an engineer.

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.

Even if coverage were fairly debatable, an insurer may still be liable for unreasonable delay or denial of benefits. Here, the record reflects evidence that Defendant:

1. Delayed reinspection despite receiving additional information;[16]
2. Issued supplemental payment only after Plaintiff's counsel's involvement;[17]
3. Allowed extended time periods between inspections, reports, and payments.[18]

Mr. Allen's opinions support a finding that the damage was observable and identifiable earlier in the adjustment process.[19] A reasonable jury could conclude that State Farm unreasonably delayed payment of benefits owed.

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[16] **Exhibit E**, SF Denial for 2nd Inspection Letter to Plaintiff.
[17] **Exhibit I**, SF Payment Letter to Plaintiff; **Exhibit F**, LOR from Daly & Black; **Exhibit G**, Plaintiff's Demand Letter.
[18] *See id.*; *See also* **Exhibit B**, Gogel Report.
[19] **See Exhibit J,** Expert Report of Brandon Allen.

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 State Farm's actions were reasonable precluding summary judgment on Plaintiff's statutory bad faith claims.

b. Expert Testimony on Claims Handling is Not Required at Summary Judgment

Defendant incorrectly suggests that Plaintiff 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 supports an inference of unreasonableness.

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 exists genuine issues of material fact that should be presented to a jury. Plaintiff's claims of common law and statutory bad faith are supported by genuine issues of reasonableness on the part of Defendant.

IV. Plaintiff's 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).

Plaintiff has presented evidence that Defendant undervalued the loss, ignored or discounted evidence of functional damage, delayed meaningful investigation and adjustment, 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 State Farm, there exists an issue of material fact regarding: (1) State Farm's unreasonable conduct under the circumstances, and (2) State Farm's knowing or reckless disregard of the validity of Mr. Price's 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. Plaintiff respectfully requests the Court wholly deny Defendant's Motion for Summary Judgment. Plaintiff seeks all such further and additional relief to which he may be justly entitled.

DATED this 5th day of January, 2026.

Respectfully submitted,

/s/ Heather Hall Melaas
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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 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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