IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

TODD WRIGHT, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. CIV-21-0430-HE
	)	
STATE FARM FIRE AND CASUALTY COMPANY,	)	
	)	
Defendant.	)	

ORDER

Plaintiffs Todd and Keiko Wright filed this case against defendant State Farm Fire and Casualty Company asserting claims arising out of a homeowner's policy State Farm had issued to them. They assert claims for breach of contract and bad faith breach, contending that State Farm improperly handled their claim. The claim arose from wind and hail damage to their property from a storm on March 27, 2020. Defendant has moved for summary judgment as to the bad faith claim and any request for punitive damages.

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). "A genuine dispute as to a material fact exists when the evidence, construed in the light most favorable to the non-moving party, is such that a reasonable jury could return a verdict for the non-moving party." Carter v. Pathfinder Energy Servs., Inc., 662 F.3d 1134, 1141 (10th Cir. 2011) (quotations and citation omitted).

The undisputed facts establish that plaintiffs submitted a claim in early 2020 for roof damage based on wind and hail. Defendant's adjuster promptly inspected the property

and identified hail damage to the home's roof, vents, gutters, skylight, downspouts, screens, overhead doors, and roof of a gazebo in the back yard.[1] The adjuster recommended replacement of the roof surface of the house and gazebo and estimated the total replacement cost at $28,708.80, payable partly as an immediate cash value payment and partly as a replacement cost benefit upon replacement of the roof.

Several weeks later, State Farm was contacted by Coppermark Public Adjustors on plaintiff's behalf. It submitted an estimate of replacement costs that was significantly higher than that of the State Farm adjustor, partly because it contemplated replacing the decking under the shingle as well as the shingles.[2] The adjustor reviewed the Coppermark submission, agreed with some relatively minor items in it, and issued a supplemental payment for $96.84. However, he disagreed with other items contributing to the significant difference, including whether additional amounts for job safety supervision and general contractor overhead and profit were warranted. He also concluded it was unnecessary to entirely replace the roof deck under the shingles (i.e., the "sheathing"). Various other items in Coppermark's estimate were also disputed and the adjustor requested that Coppermark submit additional information as to the disputed issues.

No additional submissions were made by Coppermark in the succeeding weeks, despite multiple follow-up requests from State Farm. However, by early November 2020, plaintiff had apparently filed a complaint with the Department of Insurance as to State

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[1] *The adjuster was a contract field adjustor employed by Pilot Catastrophe rather than an employee of State Farm.*

[2] *At some point, an additional estimate from a roofing contractor was also provided, which was lower than the Coppermark estimate but higher than State Farm's initial estimate.*

Farm's handling of the claim.[3] Apparently in light of the complaint and the absence of supplemental information from plaintiff, State Farm scheduled a second inspection of the premises. But before it occurred, State Farm was contacted by an attorney representing plaintiff and State Farm requested, prior to any inspection, clarification as to whether the attorney or Coppermark was speaking for plaintiffs. That clarification was eventually provided, but this lawsuit was filed prior to any second inspection actually occurring.

The question for present purposes boils down to whether plaintiffs have submitted evidence which would support an inference that defendant acted unreasonably and in bad faith under the circumstances. In order to make out a claim for bad faith breach of contract under Oklahoma law, plaintiffs must establish that: (1) they were covered under the insurance policy at issue, (2) the insurer's action were unreasonable under the circumstances, (3) the insurer failed to deal with plaintiff fairly and to act in good faith, and (4) the insurer's breach of duty was the direct cause of the damages sustained by the plaintiff. Badillo v. Mid Century Ins. Co., 121 P.3d 1080, 1093 (Okla. 2005). The essence of the tort "is the insurer's unreasonable, bad faith conduct." *Id.* (quotations and citation omitted). An insurer's conduct is not unreasonable merely by resisting a claim or litigating a position if it has a reasonable basis for doing so. *See* Sellman v. AMEX Assurance Co., 274 Fed. Appx. 655 (10th Cir. 2008) and cases cited therein. "The action of the company must be assessed in light of all facts known or knowable concerning the claim *at the time plaintiff requested the company to perform its contractual obligation.*" Conti v. Republic

[3] *The complaint to the Insurance Department is not in the record.*

Underwriters Ins. Co., 782 P.2d 1357, 1362 (Okla. 1989) (emphasis in original, citation omitted).

Plaintiffs assert various arguments as to how defendant's actions were in bad faith under these standards, but none are persuasive. They contend State Farm assigned an untrained or poorly trained adjustor to the claim. However, it is undisputed that defendant's contract adjustor had many years' experience in adjusting roofs and the presence or absence of specific training on particular coverages or issues does not translate into a basis for a bad faith determination.

Plaintiffs assert that the adjustor did not explain certain coverages to them, or at least that Mr. Wright did not remember any such explanation. But it cites no authority that the adjustor had any duty to advise plaintiffs of pertinent coverages if the claims adjustment process was otherwise reasonably conducted.

Plaintiffs contend that defendant had made up its mind in advance not to pay the full amounts due, but the only evidence it offers in support of that assertion is the fact that State Farm paid an additional amount after reviewing Coppermark's initial submission. The fact that an insurer pays additional amounts during the course of its investigation and adjustment of a claim, without more, does not support an inference that the insurer had already made up its mind to underpay. Further, the additional amount paid here was minor ($96) and does not otherwise support an inference that defendant was deliberately avoiding paying something it knew it owed.

Plaintiffs' principal objection appears to be to defendant's handling of the claim as it relates to replacement of the deck/sheathing under the roof shingles. Plaintiffs contend

the adjustor should have inspected the decking, via the attic or otherwise, and that defendant should have paid for the deck replacement under the policy's Building Ordinance or Law coverage. That provision of the policy generally provides coverage for the cost of bringing even undamaged parts of a structure "up to code" where other damaged portions are being repaired and local ordinances so require.

It is undisputed that the adjustor did not initially inspect the decking under the shingles. However, there is no evidence offered which suggests his failure to do so was so unreasonable under the circumstances. He indicated he saw nothing on the roof suggesting a puncture or damage to the underlying structure. It is undisputed that plaintiffs did not suggest any damage to the interior of the structure and did not request that he look at the decking or get in the attic. At worst, the adjuster's failure to inspect the roof decking during the initial inspection or to consider the possible application of the local building code was a mistake rising to the level of negligence, but more than mere negligence is required to support a bad faith claim. Badillo, 121 P.3d at 1094.

Once the Coppermark estimate was submitted, the matter of payment for replacement of the deck was front and center. But plaintiffs' evidence does not support an inference that defendant's treatment of that aspect of the claim was unreasonable or that its ultimate refusal to pay for replacement of the deck was anything other than a legitimate dispute over coverage. Based on the nature of the "OL" coverage, the issue was not whether there was damage to the decking under the roof. Rather, the issue was whether, as required by the local building code, the deck under asphalt shingles was "solidly sheathed." There is nothing in the record to suggest that the adjustor's and defendant's

conclusion in that regard was unreasonable or outside the scope of reasonable dispute. At least some of the photographs submitted by Coppermark suggest the deck was already solidly sheathed and hence would not have to be replaced.

As to the other matters in dispute as to the claim, it appears undisputed that defendant continued to seek additional documentation from plaintiffs and Coppermark to resolve differences between defendant's and Coppermark's estimates. Over the next three months, defendants sent at least four communications to Coppermark or plaintiffs seeking photographs or other documents supporting Coppermark's estimates. No additional documentation was provided to defendant.

Eventually, however, defendant did attempt to conduct a second inspection of the property to help resolve the differences. The fact that the second investigation was not conducted before the filing of this case does not suggest bad faith, in light of the evidence as to weather delays and defendant's efforts to clarify who spoke for the plaintiffs in the further negotiations.

Finally, plaintiffs rely on what they characterize as evidence of defendant's "pattern and practice" of underpaying claims, relying on complaints filed in other cases. Multiple complaints filed by multiple plaintiffs and plaintiffs' lawyers are nothing more than multiple accusations. They do not, without more, translate into proof of anything.

In sum, the court concludes plaintiffs have not submitted evidence which, even when viewed in the light most favorable to them, would support an inference that defendant's investigation and adjustment of the claim were unreasonable under the circumstances or reflected other than a legitimate dispute as to the policy's application.

Defendant is therefore entitled to judgment as to the bad faith claim. In light of that conclusion, it is unnecessary to resolve defendant's further, alternative argument as to whether a sufficient basis for punitive damages has been shown.

Defendant's Motion for Partial Summary Judgment [Doc. #26] is **GRANTED.** Judgment will be entered in favor of defendant on the bad faith claim at the conclusion of the case.

IT IS SO ORDERED.

Dated this 5th day of May, 2022.

JOE HEATON
UNITED STATES DISTRICT JUDGE