

2025 WL 736803

Only the Westlaw citation is currently available.

United States District Court, W.D.
Texas, San Antonio Division.

GERONIMO RODRIGUEZ, JR., Plaintiff,

v.

STATE FARM LLOYDS, Defendant.

CIVIL NO. SA-21-CV-508-OLG

I

Filed 02/26/2025

ORDER

ORLANDO L. GARCIA UNITED STATES DISTRICT
JUDGE

*1 Pending before the Court are the following motions:

- Defendant State Farm Lloyds's Amended Motion for Partial Summary Judgment (the "First Motion for Summary Judgment") (Dkt. No. 70), to which Plaintiff Geronimo Rodriguez, Jr. filed a response (Dkt. No. 72), and Defendant filed a reply (Dkt. No. 74); and
- Plaintiff's Motion for Partial Summary Judgment on Coverage Issues (the "Second Motion for Summary Judgment") (Dkt. No. 71) (collectively, the "Motions for Summary Judgment") (Dkt. Nos. 70–71), to which Defendant filed a response (Dkt. No. 73).

For the reasons that follow, the First Motion for Summary Judgment (Dkt. No. 70) is **GRANTED**, and the Second Motion for Summary Judgment (Dkt. No. 71) is **DENIED**.

I. BACKGROUND

This is a first-party insurance dispute arising from hail damage to the metal roof of Plaintiff's home (the "Home"). Plaintiff purchased an insurance policy (the "Policy") from Defendant covering a number of accidental direct physical losses, including hailstorm damage. *See* Dkt. No. 70-1 at 23. On April 13, 2019, a hailstorm struck the Home. *See* Dkt. No. 71-3 at 4. That hailstorm created a number of dents on the Home's roof in addition to other miscellaneous damage. *See*

Dkt. No. 70-2 at 86–88, 126–27. Plaintiff filed an insurance claim shortly thereafter. *See id.* at 27.

On April 25, 2019, one of Defendant's adjusters, Ken Riley ("Riley"), inspected the Home. *See id.* at 31. Based thereon, Riley found that most of the damage was cosmetic and, thus, excluded under the Policy. *See id.* at 26. Indeed, Riley found that there was only \$4,230.37 in covered loss. *See id.* at 31. Because Plaintiff's deductible exceeded that figure, Defendant issued no payment to Plaintiff. *See id.*

On July 12, 2019, Plaintiff requested an additional inspection. *See id.* at 25. On August 8, 2019, another of Defendant's adjusters, Robert Deady ("Deady") inspected the Home. *See id.* at 24. While Deady found additional damage during his inspection, *id.*, he estimated a total of \$5,102.02 in covered loss. *See id.* at 43. Once again, this figure was less than Plaintiff's deductible, and Defendant issued no payment as a result. *See id.*

On September 6, 2019, Plaintiff submitted an estimate far exceeding the amount estimated by Defendant. *See id.* at 53-62. In response, Defendant revised its estimate to account for additional covered loss. *See id.* at 65. Because the new estimate was still lower than Plaintiff's deductible, Defendant did not issue payment. *See id.*

Thereafter, Plaintiff retained an engineer, Tom Irmiter ("limiter"), who opined that the dents on the Home's roof were material and not cosmetic. Specifically, Irmiter found that the hail caused dents which thinned the roof's protective coating and created microscopic fractures allowing water to penetrate (and eventually corrode) the metal. *See* Dkt. Nos. 36-1 at 145; 70-2 at 103–04. Defendant hired an engineer in turn, who asserted that the dents "were cosmetic, as no fractures, splits, or disengaged lap joints that would reduce the water-shedding ability or expected service life of the panels were observed on the roof panels." Dkt. No. 70-2 at 129.

*2 On April 21, 2021, Plaintiff initiated this action in state court and asserted contractual and extra-contractual claims against Defendant, who promptly removed the case to federal court on the basis of diversity jurisdiction. *See* Dkt. Nos. 1; 1-2. On August 16, 2024, after lengthy discovery, Defendant moved for partial summary judgment. *See* Dkt. No. 35. Central to Defendant's motion was the applicability of a cosmetic loss exclusion (the "Exclusion") purportedly "precluding coverage for cosmetic loss to Plaintiff's metal roof." *Id.* at 4. The Exclusion provides:

We do not insure for **cosmetic loss to metal roof coverings** caused by hail.

As used in this endorsement:

1. **cosmetic loss** means only that loss that alters the physical appearance of the **metal roof covering** but does not result in the penetration of water through the **metal roof covering** or does not result in the failure of the **metal roof covering** to perform its intended function of keeping out the elements over an extended period of time.
2. **metal roof covering** means the metal roofing material exposed to the weather, the underlayments applied for moisture protection, and all flashing required in the replacement of a **metal roof covering**.

Dkt. No. 35-1 at 30 (emphasis in original). However, the copy of the Exclusion attached to Defendant's motion was signed by an unknown third party and referenced the wrong policy number. *See id.* Based largely thereon, the Court denied the motion, permitted the parties to conduct additional discovery, and directed the filing of cross motions for summary judgment on issues of coverage. *See* Dkt. Nos. 57 at 3–5; 61; 65.

On December 27, 2024, after conducting additional discovery, the parties filed the Motions for Summary Judgment presently pending before the Court. *See* Dkt. Nos. 70–71. Defendant attached a copy of the Exclusion bearing Plaintiff's signature to the First Motion for Summary Judgment. *See* Dkt. 70-1 at 58. On January 10, 2025, the parties filed responses to the Motions for Summary Judgment. *See* Dkt. Nos. 72-73. On January 17, 2025, Defendant filed a reply in support of the First Motion for Summary Judgment. *See* Dkt. No. 74.

II. LEGAL STANDARD

Summary judgment is appropriate if the record—including depositions, documents, electronically stored information, affidavits or declarations, admissions, and interrogatory answers—“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), (c)*. At this stage, the movant bears the burden of identifying those portions of the record it believes demonstrate the “absence of a genuine issue of material fact,” *Lincoln Gen. Ins. Co. v. Reyna*, 401 F.3d 347, 349 (5th Cir. 2005) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986)), or “pointing out ‘the absence of evidence supporting the non[-]moving party's case.’ ” *Duffy v. Leading Edge Prods., Inc.*, 44 F.3d 308, 312 (5th Cir. 1995) (quoting *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 913 (5th Cir. 1992)).

If the movant meets its burden, the non-moving party must present specific facts that show “the existence of a ‘genuine’ issue concerning every essential component of its case.” *Am. Eagle Airlines, Inc. v. Air Line Pilots Ass'n, Int'l*, 343 F.3d 401, 405 (5th Cir. 2003) (quoting *Morris v. Covan World Wide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir. 1998)); *see also Lincoln Gen. Ins. Co.*, 401 F.3d at 349. The non-movant cannot create a dispute of fact with “conclusory allegations” or “unsubstantiated assertions.” *Delta & Pine Land Co. v. Nationwide Agribusiness Ins. Co.*, 530 F.3d 395, 399 (5th Cir. 2008) (citing *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)). In the absence of any proof, the court will not assume that the non-movant could or would prove the necessary facts. *Little*, 37 F.3d at 1075 (citing *Lujan v. Natl Wildlife Fed'n*, 497 U.S. 871, 888(1990)).

*3 “A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-movant.” *Tamez v. Manthey*, 589 F.3d 764, 769 (5th Cir. 2009) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson*, 477 U.S. at 248. In considering the evidence presented, courts review the facts and inferences to be drawn from the record in the light most favorable to the non-moving party. *Reaves Brokerage Co. v. Sunbelt Fruit & Vegetable Co.*, 336 F.3d 410, 412 (5th Cir. 2003) (citing *Olabisiotosho v. City of Houston*, 185 F.3d 521, 525 (5th Cir. 1999)). A court may not, however, “make credibility determinations or weigh the evidence,” as those tasks are among those specifically reserved for the jury. *Reeves*

v. *Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–51 (2000) (collecting cases).

III. ANALYSIS

The Motions for Summary Judgment concern two key coverage issues. First, the parties dispute the validity of the Exclusion. Second, the parties disagree regarding the applicability of the Exclusion in this case. The Court begins by resolving the coverage issues and then turns to the effect of their resolution on the claims in this lawsuit.

A. Validity of the Exclusion

Plaintiff argues that Defendant failed to properly authenticate both the Exclusion and the signature affixed thereon. *See* Dkt. No. 71 at 6–9. Defendant contends that, although Plaintiff “no longer recalls signing that particular exclusion page,” he admitted to doing so in his first deposition and does not expressly deny doing so now. *See* Dkt. No. 73 at 6–7. In other words, Defendant asserts that there is not a genuine dispute of material fact with respect to the validity of the Exclusion. The Court agrees with Defendant.

First, Plaintiff’s objection to the authentication of the Exclusion itself is meritless. “At the summary judgment stage, evidence need not be authenticated or otherwise presented in an admissible form.” *Maurer v. Indep. Town*, 870 F.3d 380, 384 (5th Cir. 2017) (first citing *FED. R. CIV. P. 56(c)*; then citing *Lee v. Offshore Logistical & Transp., LLC*, 859 F.3d 353, 355 (5th Cir. 2017); and then citing *LSR Consulting, LLC v. Wells Fargo Bank, N.A.*, 835 F.3d 530, 534 (5th Cir. 2016)). At a minimum, the Exclusion is capable of being presented in an admissible form at trial. That is enough.

Second, Plaintiff’s objection to the authenticity of his signature is without merit. In his first deposition, Plaintiff admitted to signing the Exclusion. *See* Dkt. No. 70-3 at 6 (“I did sign the exclusion.”). The Policy’s declaration page confirms as much. *See* Dkt. No. 70-1 at 5. And Defendant has now produced a signed copy of the Exclusion—a signature which Plaintiff admits resembles his own. *See* Dkt. Nos. 70-1 at 58; 70-3 at 39. While Plaintiff now claims that he does not remember signing the Exclusion, *see* Dkt. No. 71-12 at 11, his lack of memory “does not create a genuine issue of material fact as to the signature’s validity.” *E.g., United States v. Budd*, No. 14-cv-1501, 2016 WL 4771467, at *2 (N.D. Tex.

Feb. 29, 2016) (citing *Batiste v. Island Records, Inc.*, 179 F.3d 217, 223 (5th Cir. 1999)); *see also* *Provident Life & Accident Ins. Co. v. Goel*, 274 F.3d 984, 993–94 (5th Cir. 2001) (holding there was not a genuine issue of material fact with respect to the authenticity of the defendant’s signature where he “stated that while the signature looked like his, he did not remember signing the [document]”).

B. Applicability of the Exclusion

*4 Plaintiff argues that there is a genuine dispute of material fact with respect to whether the dents on the Home’s roof are cosmetic. *See* Dkt. No. 72 at 12-13. Defendant argues that the dents are clearly cosmetic, and that the only non-cosmetic loss identified by Plaintiff consists of future rust or corrosion, which is itself excluded under the Policy. *See* Dkt. No. 70 at 11–12. Therefore, regardless of whether rust eventually develops, Defendant concludes that the dents are subject to the Exclusion. *See id.* at 13. The Court agrees with Defendant for two main reasons.

First, the Court has already decided this issue. But to state it here once again, “under the plain meaning of the cosmetic exclusion, there is no coverage for dents to a metal roof where there is no penetration of water through the metal roof covering and the roof is performing its intended function of keeping out the elements.” Dkt. No. 57 at 3. The Court only denied summary judgment on this theory because it was unclear whether the Exclusion was a part of the Policy, *see id.* at 5, an issue which the Court has now resolved in Defendant’s favor.

Second, the only evidence of non-cosmetic loss is the possibility that the roof will develop rust sooner than it ordinarily would. *See* Dkt. No. 72-10 at 6. Even if that were so, such loss would be excluded under the Policy. *See* Dkt. No. 70-1 at 25 (excluding coverage for any loss “which consists of, or is directly and immediately caused by,” “corrosion, electrolysis[,] or rust”). Accordingly, neither the dents nor the future development of rust is covered by the Policy. *See* *NuStar Energy LP v. Infrassure Ltd.*, No. 16-cv-265, 2017 WL 3713470, at *3–4 (W.D. Tex. Apr. 26, 2017), *vacated after settlement*, 2017 WL 5476400 (W.D. Tex. July 17, 2017); *Iyengar v. Liberty Ins. Corp.*, No. 21-cv-1091, 2023 WL 8505692, at *4–5 (W.D. Tex. Oct. 24, 2023), *R. & R. adopted*, 2024 WL 1161321 (W.D. Tex. Mar. 15, 2024).



C. Breach of Contract

Plaintiff asserts a breach of contract claim against Defendant. *See* Dkt. No. 1-2 at 11. Defendant moves for summary judgment on this claim “as it pertains to damage claimed to ... Plaintiff’s metal roof”—not as to other damage which remains in dispute. Dkt. No. 70 at 1 n.1. According to Defendant, because the Exclusion is valid and applicable, it is entitled to summary judgment on this portion of Plaintiff’s contractual claim. *See id.* at 9-14. The Court agrees. To the extent the breach of contract claim relates to the dents on the Home’s roof, there is no coverage, and summary judgment is appropriate. *E.g.*, *Farris v. State Fam Lloyds*, No. 19-3872, 2021 WL 398489, at *5 (S.D. Tex. Feb. 4, 2021).

D. Extra-Contractual Claims


Plaintiff also asserts several extra-contractual causes of action, including common law and statutory bad faith claims and a claim arising under the Texas Prompt Payment of Claims Act (the “TPPCA”). *See* Dkt. No. 1-2 at 11–14. Flowing therefrom, Plaintiff seeks treble damages. *See id.* at 14. Defendant moves for summary judgment on Plaintiff’s extra-contractual claims and request for treble damages. *See* Dkt. No. 70 at 1.¹ Plaintiff objects on the grounds that the Court only authorized the parties to file cross motions for summary judgment on coverage issues—not Plaintiff’s extra-contractual claims. *See* Dkt. No. 72 at 1–3. Defendant counters that Plaintiff’s extra-contractual claims—like his contractual claim—“flow directly from the core coverage issues in dispute” and, thus, the Court should address both together. *See* Dkt. No. 74 at 3–4. The Court agrees with Defendant. As discussed in greater detail below, to the extent Plaintiff’s extracontractual claims arise from the dents on the Home’s roof, the absence of coverage is dispositive.

1. Bad Faith

*5 Statutory and common law bad faith claims are analyzed under the same standard. *E.g.*, *Aqua Vitae Tr. v. AIX Specialty Ins. Co.*, No. 21-cv-72, 2022 WL 2902724, at *6 (W.D. Tex. May 1, 2022) (citing *Tex. Mut. Ins. Co. v. Sara Care Child Care Ctr., Inc.*, 324 S.W.3d 305, 317 (Tex. App.—El Paso 2010, pet. denied)). “An insured cannot recover *any* damages based on an insurer’s statutory violation unless the insured establishes a right to receive benefits under the policy or an injury independent of a right to benefits.”  *Menchaca*, 545 S.W.3d at 500 (emphasis in original) (citing  *Provident Am. Ins. Co. v. Castañeda*, 988 S.W.2d 189, 198 (Tex. 1998)). There is no coverage for the dents on the Home’s roof. Furthermore, Plaintiff neither alleges nor presents evidence

of an injury independent of his right to receive benefits.² Accordingly, Plaintiff cannot prevail on these claims. *See Espinoza v. State Farm Lloyds*, No. 23-cv-751, 2024 WL 4919587, at *6–7 (W.D. Tex. Sept. 16, 2024).

2. TPPCA

Under the TPPCA, “the plaintiff must establish that there is a claim under the insurance policy for which the insurer is liable. If the policy does not provide coverage for the claims in the underlying lawsuits, the insurer is not liable under the statute.”  *PPI Tech. Servs., L.P. v. Liberty Mut. Ins. Co.*, 515 F. App’x 310, 314 (5th Cir. 2013); *see* TEX. INS. CODE ANN. § 542.060(a) (limiting liability to those circumstances where “an insurer... is liable for a claim under an insurance policy”). In other words, if there is no coverage for the claim, then there is no relief under the TPPCA. *ADI Worldlink, L.L.C. v. RSUI Indem. Co.*, 932 F.3d 369, 375 (5th Cir. 2019). There is no coverage for the dents on the Home’s roof. Absent coverage, Plaintiff is not entitled to relief under the TPPCA.

3. Treble Damages

A plaintiff can only obtain treble damages if he prevails on a statutory claim. *See* TEX. INS. CODE ANN. § 541.152(a) (limiting award of treble damages to a plaintiff who “prevails” on a statutory claim); *Kazanjan v. State Farm Lloyds*, No. 22-CV-71, 2023 WL 2034441, at *5 (W.D. Tex. Feb. 15, 2023). Because Plaintiff’s bad faith claims fail, so too does his request for treble damages.

IV. CONCLUSION

For the foregoing reasons, the First Motion for Summary Judgment (Dkt. No. 70) is **GRANTED**, and the Second Motion for Summary Judgment (Dkt. No. 71) is **DENIED**.

IT IS THEREFORE ORDERED that Plaintiff’s contractual and extra-contractual claims are **DISMISSED WITH PREJUDICE** insofar as they arise from the dents on the Home’s roof.

This case will proceed to a jury trial on all of Plaintiff’s claims to the extent they arise from other disputed loss.

*6 **IT IS SO ORDERED.**

SIGNED this 26 day of February, 2025.

All Citations

Slip Copy, 2025 WL 736803

Footnotes

1 In separate sections, Defendant requests summary judgment on Plaintiff's claims for knowing violations of the Texas Insurance Code and treble damages. See Dkt. No. 70 at 15–16. This request is redundant. The Texas Insurance Code allows recovery of treble damages “on a finding by the trier of fact that the defendant knowingly committed the act complained of.” [TEX. INS. CODE ANN. § 541.152\(b\)](#); see [USAA Tex. Lloyds Co. v. Menchaca, 545 S.W.3d 479, 488 \(Tex. 2018\)](#). Thus, there is not a material distinction between Defendant's requests.

2 With respect to damages, Plaintiff alleges:

The above-described conduct of Defendant has caused Plaintiff actual damages, including without limitation the amount of wrongfully withheld benefits owed under the Policy and the amount of any lost benefits under the Policy for the cost to repair or replace the hail storm [sic] damage to the Property. Plaintiff is also entitled to recover consequential and incidental damages resulting from Defendant's conduct, including without limitation any investigative and engineering fees incurred by Plaintiff. Plaintiff is also entitled to recover a per annum interest penalty on the wrongfully withheld amount owed on the insurance claim as damages

Dkt. No. 1-2 at 14. Such injuries clearly “flow” or “stem” from the denial of Plaintiff's insurance claim and, thus, are not independent of the right to receive benefits. See [Menchaca, 545 S.W.3d at 500](#) (citing [Castañeda, 988 S.W.2d at 199](#)).

End of Document

© 2025 Thomson Reuters. No claim to original U.S. Government Works.