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

THOMAS H. BATES,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY COMPANY,

Defendant.

Case No. CIV-21-00705-JD

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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Plaintiff Thomas A. Bates ("Plaintiff") hereby objects and responds in opposition to the Motion for Partial Summary Judgment (Doc. 43) filed by Defendant State Farm Fire & Casualty Company ("Defendant" or "State Farm") and respectfully requests this Court to deny same on grounds that this case is replete with genuine issues of material fact and Plaintiff has established the elements necessary to bring claims for bad faith and punitive damages.

STATEMENT OF THE CASE

Plaintiff owned a rental home located at 2605 Elwood Drive in Edmond, Oklahoma. State Farm insured the home continuously for 11 years under Policy No. 96-BJ-Q252-5. Windstorm and hail were covered causes of loss under the Policy.

On or about February 4, 2021, after a roof contractor (who was a former State Farm team manager) confirmed hail damage to the entire roof, Plaintiff submitted a hail damage claim to State Farm. Upon inspection, State Farm confirmed that the rental home had sustained hail damage to the garage door, window screens, attic vent cover, pipe jack flashing, and exhaust cap. However, State Farm took the unreasonable position that the shingles on the roof had **not** been damaged by hail. Even after being presented with additional evidence of hail damage on the roof, State Farm refused to re-inspect and/or pay for said damage. This breach of contract/bad faith lawsuit ensued.

RESPONSE TO DEFENDANT'S STATEMENT OF FACTS

"Summary judgment is a means of testing in advance of trial whether the available evidence would permit a reasonable jury to find in favor of the party asserting a claim." Blocker v. ConocoPhillips Co., 378 F. Supp. 3d 1066, 1068 (W.D. Okla. 2019). "[T]he

relief contemplated is drastic and the rule should be applied with caution to the end that litigants will have a trial on bona fide disputes." Ando v. Great Western Sugar Co., 475 F.2d 531, 535 (10th Cir. 1973).

"The Tenth Circuit requires that the moving party show 'beyond a reasonable doubt that it is entitled to summary judgment.'" Blocker at 1068 (quoting Pelt v. Utah, 539 F.3d 1271 (10th Cir. 2008)). Specifically, the movant must show "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). To determine whether a genuine dispute exists, this Court must "view[] the evidence and the inferences drawn from the record in the light most favorable to the nonmoving party." Blocker at 1069. Summary judgment is not proper if "the evidence is susceptible of different interpretations or inferences by the trier of fact" or "reasonable people might differ as to its significance." Id. at 1072 (citing Hunt v. Cromartie, 526 U.S. 541 (1999)); *see also* Beaird v. Seagate Tech., Inc., 145 F.3d 1159, 1165 (10th Cir. 1998) ("[D]isputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.") (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)).

Plaintiff would show this Court that genuine disputes as to the material facts of this case preclude summary judgment, as follows:

1. Admitted.

2. Admitted.

3. Denied in part. Though Plaintiff did report the claim for hail damage to his property to State Farm, the proximity adjuster, Tresa Dunnican-Jacome, ran an

AccuWeather report to determine the most recent hail event at the property and decided that was the date of loss. However, there were several hailstorms over the property over the preceding three years. [*See* Exhibit 4, Jacome depo., 211:12-212:13, 213:4-25.]

4. Admitted.

5. Admitted.

6. Admitted.

7. Denied. During the inspection, Jonathan Marks, who himself used to work for State Farm, including 10 years as a team manager, showed Jacome breaking of the mat, to which Jacome responded, "That might be hail." However, she indicated to Marks that her supervisor would not agree. [*See* Exhibit 1, Marks depo., 14:10-20, 42:11-43:8; *see also* Exhibit 2, Aegis Notes at Bates 0117, wherein Marks documents: "While she acknowledged the damage looks like hail, she said her boss, Jacqueline will not agree and will not pay for it. Theresa called me back after she forwarded photos and said Jacqueline indeed said the damage is wear and tear. Thanked Theresa for following up and said we will be in touch."]

8. Denied. Jacome sent a text message to her team manager, Jacqueline Draper, asking: "What do you think about these? Hail? Or wear?" This exchange occurred after the inspection where Jacome told Marks, "That might be hail," but that her supervisor would not agree. [*See* Exhibit 3, Draper's Texts; *see also* response to UMF 7.] Notably, there is no notation of this text message exchange in State Farm's claim file. Neither Draper nor Jacome saved the text message exchange to the file, and neither

placed any note in the file about Draper's involvement in the decision on what to call the damage on Plaintiff's roof. [*See* Exhibit 4, Jacome depo., 92:15-22.]

9. Denied. The referenced letter at SF113-114 quotes no policy language and can hardly be described as a denial letter. Instead, it states, "I am issuing payment for the items I found hail damages to." This statement is incorrect, as Jacome found damage to Plaintiff's mailbox which she did not pay. [*Compare, e.g.,* Exhibit 5, Claim File at SF.BATES 000051 (noting hail damage to overhead door and mailbox), *with* Exhibit 6, Explanation of Benefits.]

10. Admitted, but this material fact weighs against State Farm's Motion for Partial Summary Judgment. Marks specifically pointed out damage that should have been paid but was not. [*See* Exhibit 7, 3/10/21 Email from Marks ("SF paid for three roof vent caps, two roof pipe jacks (5 are damaged), two attic vent covers, 3 window screens, aluminum window beading and the entire double garage overhead door. What is perplexing to say the least is SF did not acknowledge the significant hail impact damage to the roof shingles.")] Marks also included the photographs of all five damaged pipe jacks. [*See* Exhibit 8, Photos of Pipe Jacks.]

11. Denied. Though Jacome's file note indicates she reviewed the photographs sent by Marks, and Draper claims she also reviewed the photographs, neither one of them seems to have reviewed them very carefully or with the goal of paying for any damage that had not been paid following the inspection. Had either Jacome or Draper reviewed Marks's email and the accompanying photographs, they would have immediately seen, at a minimum, that State Farm had not paid for all five of the pipe jacks that had been

damaged by hail. [*See* Exhibit 9, Draper depo., Vol. I, 123:24-125:1; *see also* Response to Material Fact 10, *supra*.]

12. Admitted. Gary Bates did not receive the denial letter, which Jacome sent to the wrong email address. Neither was the letter sent to the named insured, Thomas Bates. Additionally, Jacome never contacted Gary or Thomas Bates to explain the reason for the denial or what would be needed for a second inspection. [*See* Exhibit 10, Gary Bates depo., 45:5-11; *see also* Plaintiff's Statement of Additional Undisputed Material Facts 26 and 27, *infra*.]

13. Admitted.

14. Denied. Gary Bates emailed State Farm not only to ask for a second inspection (since the claim was originally denied by a supervisor after reviewing photos) but also to ask State Farm to "advise how we proceed from here." [*See* Exhibit 11, 3/30/21 Email from G. Bates.]

15. Denied. Korbelik's file notes indicate he stated that the contractor did not provide "any photos of any additional damages that SF didn't already find." However, this is incorrect. [*See* Response to UMF 10 & 11.] According to State Farm's own policies, this should have resulted in a second inspection. [*See* Response to UMF 20.] Korbelik's subsequent voicemail to Bates also does not mention that he must present new evidence warranting a second inspection, only reiterating the prior denial. [*See* Exhibit 5, Claim File at SF.BATES_000049-50.]

16. Denied. Mendoza never reviewed the pictures the contractor had sent. Mendoza had no authority to overrule a proximity adjuster and proximity team manager's

decision on a claim. Mendoza's team manager also could not overrule the prior decision. [*See* Exhibit 12, Mendoza depo., 94:20-95:22.] Because Jacome had not documented that she ever explained the denial of the claim and the denial of a second inspection to Bates or his son, Mendoza sent a claim note to Jacome to explain the decision and what is needed for an additional inspection. [*See* Exhibit 5, Claim File at SF.BATES_000049.]

17. Denied. Despite specific direction to explain to the insured what would be needed for a second inspection, Jacome never documented the file that she explained this to Bates or his son and has no recollection of doing so. [*See* Exhibit 4, Jacome depo., 230:7-16.]

18. Admitted. Gary Bates's email was subsequently ignored by State Farm. No one from upper management contacted him. Instead, an adjuster labelled the email, noted that the team manager, Draper, was already in the claim file and "no further handling required at this time." [*See* Exhibit 5, Claim File at SF.BATES_000048-49.]

19. Denied. Pineset contacted Gary Bates after Bates's April 20, 2021 follow-up to his April 8, 2021 email, to which he received no response. [*See* Exhibit 13, 4/2021 Emails from G. Bates ("Does anyone care at all. Please read and respond. This is bad faith claim handling plain and simple.").] Instead of addressing the still-outstanding request for a second inspection or giving direction on how to proceed with a second inspection, Pineset discussed an ACV endorsement on the policy. There was no point in discussing an ACV roof endorsement when State Farm was not even agreeing to pay for the roof. [*See* Exhibit 10, Gary Bates depo., 57:7-11.]

20. Admitted. However, to the extent this is what State Farm says about granting second inspections, State Farm did not follow its own policy about when to grant a second inspection. The pictures and the accompanying email from the contractor, Marks, specifically pointed to indisputable damage which was overlooked and not paid. Additionally, Jacome testified that the contractor submitted photos of damages of which Jacome did not possess. [*See* Exhibit 4, Jacome depo., 232:11-18.]

PLAINTIFF'S STATEMENT OF
ADDITIONAL UNDISPUTED MATERIAL FACTS

1. Plaintiff's Policy with State Farm was in force continuously from October 10, 2010 through February 4, 2021. [*See* Exhibit 14, State Farm's Discovery Responses (excerpts) at Supp. Answer to Interrog. No. 4 & Resp. to RFA No. 7.]

2. Hail damage causes a bruise and/or a fracture of the mat on the underside of the shingle. [*See* Exhibit 9, Draper depo., Vol I, 48:11-19; 55:18-23.]

3. Bruising cannot always be seen in a one-dimensional photograph. Oftentimes, bruising must be felt, *i.e.,* by physically touching the shingle. [*See* Exhibit 9, Draper depo., Vol. I, 48:9-19, 49:14-50:15.]

4. A fracture occurs when the hailstone breaks the backside of the mat. In order to see fractures and indentions on the bottom side of the shingle, one would need to lift the shingle. [*See* Exhibit 9, Draper depo., Vol. I, 51:15-23, 56:7-18; *see also* Exhibit 15, Arnold depo., 186:10-187:5.]

5. Sharon Arnold, Section Manager for State Farm, expects claims adjusters to feel, lift, and look underneath the shingle to complete their inspection as to whether a roof has hail damage. [*See* Exhibit 15, Arnold depo., 188:19-24.]

6. Jacome had not worked any hail claims before joining State Farm. [*See* Exhibit 4, Jacome depo., 64:25-65:9.]

7. Before joining State Farm, Jacome had watched a training module regarding hail "maybe once or twice." [*See* Exhibit 4, Jacome depo., 66:24-67:2.]

8. Jacome started working for State Farm on November 8, 2020. [*See* Exhibit 4, Jacome depo., 93:8-10.]

9. When Jacome started working for State Farm, she went through various training modules, videos, and PowerPoints regarding hail recognition. However, none of this training included any testing. [*See* Exhibit 4, Jacome depo., 208:9-25.]

10. After her training, Jacome went on inspections with Kelly Wienstroer, another adjuster from Draper's team, and looked at 6-8 roofs over a period of two weeks. Interestingly, none of those roofs were determined to have hail damage. [*See* Exhibit 4, Jacome depo., 209:1-19.]

11. Jacome received no hands-on training other than accompanying Wienstroer on those 6-8 roof inspections wherein State Farm identified no hail damage. [*See* Exhibit 4, Jacome depo., 107:1-108:2.]

12. Other than watching videos and PowerPoints and going on 6-8 inspections with Wienstroer, Jacome had no experience in recognizing what was and was not hail damage. [*See* Exhibit 4, Jacome depo., 210:10-17.]

13. Jacome was turned loose as a proximity/field adjuster in January 2021. She inspected the Bates roof just a month later, on February 23, 2021. [*See* Exhibit 4, Jacome depo., 94:1-95:1; Exhibit 5, Claim File at SF.BATES_000050-51.]

14. Jacome could not identify what had been labelled in State Farm's own training materials [attached hereto as Exhibit 16] as bruising. She cannot tell what hail bruising is by looking at it alone. She could not even tell that a shingle was damaged while looking at a photograph in other State Farm training material of what hail damage looks like. These State Farm training material depictions look nearly identical to photographs taken of damage to the shingles on the Bates roof. [*See* Exhibit 4, Jacome depo., 205:19-206:8, 206:25-207:6, 207:10-20.]

15. Jacome's team manager, Draper, also could not—or would not—identify what had been labelled in State Farm's own training materials as bruising. These State Farm training material depictions look nearly identical to photographs taken of damage to the shingles on the Bates roof. [*See* Exhibit 9, Draper depo., Vol. I, 47:18-48:8.]

16. After working on Plaintiff's claim, Jacome inspected a roof on another home where hail damage had been reported. Jacome paid for two slopes of the roof but determined that the remaining damage was a manufacturing defect. Jacome testified that the hail was so significant that the hail hits were touching each other all over the roof but, because she could not feel bruising all through the roof on the front slope, she denied that portion of the claim. On a second inspection with another adjuster, it was determined that the whole roof was damaged by hail, but Jacome had just never seen fresh hail to that degree. [*See* Exhibit 4, Jacome depo., 100:7-19, 101:4-102:15, 111:16-23.]

17. Jacome testified that if she found hail damage and was going to recommend replacement of a roof or part of a roof, she would need to text pictures to Draper, so Draper could verify it was hail damage. [*See* Exhibit 4, Jacome depo., 115:17-116:6.]

18. If Jacome determined only the metals on the home were damaged by hail, and not the shingles, she did not need to text pictures to Draper for approval. [*See* Exhibit 4, Jacome depo., 119:7-11.]

19. Despite what Section Manager Sharon Arnold expects claims adjusters to do, Jacome testified that she did not lift shingles to see the underside. Thus, she would not have been able to see any fracturing of the mat. [*See* Exhibit 4, Jacome depo., 85:3-5; *see also* Exhibit 15, Arnold depo., 188:19-24.]

20. Jacome assumed that the metals on Plaintiff's roof had been damaged in multiple hailstorms and may not have been replaced following a hail loss in 2012, despite never asking anyone if the metals had been replaced and despite never receiving any training on this issue. [*See* Exhibit 4, Jacome depo., 171:19-172:24.]

21. Section Manager Sharon Arnold expects adjusters to look at previous claims and document the review in the claim file. Jacome had the ability to look at State Farm's records to see what was paid in Plaintiff's 2012 claim but did not ever do so. [*See* Exhibit 15, Arnold depo., 122:18-123:11, 123:18-23; *see also* Exhibit 4, Jacome depo., 174:1-10.]

22. Jacome did not ask the contractor about the history of Plaintiff's roof or vents being replaced. [*See* Exhibit 4, Jacome depo., 140:7-20.]

23. The contractor present at the inspection was the same contractor who replaced the roof and vents in 2013. [*See* Exhibit 1, Marks depo., 34:10-14.]

24. Because Jacome had not documented that she ever explained the denial of the claim and the denial of a second inspection to Bates or his son, a desk adjuster, Anthony Mendoza, sent a claim note directing her to explain the decision and what was needed for an additional inspection. [*See* Exhibit 5, Claim File at SF.BATES_000049.]

25. Despite specific direction to explain to the insured what would be needed for a second inspection, Jacome never documented in the claim file that she explained this to Bates or his son and has no recollection of doing so. [*See* Exhibit 4, Jacome depo., 230:7-16.]

26. Gary Bates asked for an experienced adjuster and a supervisor of supervisors to look at photographs he submitted to State Farm and for the courtesy of a reply. [*See* Exhibit 13, 4/08/2021 Email from G. Bates.] Arnold's expectation was that Draper would review the email and contact Bates to discuss his concerns. [*See* Exhibit 15, Arnold depo., 107:6-21, 108:11-18.]

27. Draper never contacted any of the Bates family. [*See* Exhibit 9, Draper depo., Vol. I, 73:10-74:12.]

28. Amy Lanier started working for State Farm in October of 1999 and was employed with State Farm for a little over 21 years. [*See* Exhibit 17, Lanier depo., 11:8-9, 25:15-19.] She was trained for approximately six months, including training on hail recognition. She attended in-person claims school, climbed on mock roofs, and completed tests to check her knowledge. [*See* Exhibit 17, Lanier depo., 22:2–24:21.]

29. After Draper became team manager, the adjusters on her team had their authority to total a roof due to hail damage removed because they "were paying for too many roof claims." [*See* Exhibit 17, Lanier depo., 44:11-24.]

30. After Draper became team manager, the adjusters on her team were required to send her pictures of the roof via text or email if they wanted to total a roof due to hail damage. Draper would then make the decision regarding whether to pay or not pay for the damage to the roof, and the adjuster had to wait for that decision before noting the claim file. [*See* Exhibit 17, Lanier depo., 47:16-48:10.]

31. After Draper became team manager, adjusters would complete the inspection and take pictures, but were not allowed to use chalk to circle what they determined to be hail damage. Adjusters were instructed to consult with Draper before completing the scope sheet and putting notes about the results of the inspection in the claim file. Notably, however, the consultation with Draper was not to be noted in the claim file. Adjusters on Draper's team were instructed to keep her name out of the file and pass the coverage decision off as their own, even when they disagreed with it. [*See* Exhibit 17, Lanier depo., 78:2-79:15, 110:25-111:15, 120:9-17.]

32. Draper instructed her team to use the term "wear and tear" instead of "old hail damage." Hail damage is a covered cause of loss, whereas wear and tear is not. [*See* Exhibit 17, Lanier depo., 97:6-98:22, 123:24-124:22.]

ARGUMENT AND AUTHORITY

"In determining whether to pay a claim, an insurer must conduct an investigation 'reasonably appropriate under the circumstances.'" Hayes v. State Farm Fire & Cas. Co.,

855 F. Supp. 2d 1291, 1302 (W.D. Okla. 2012) (quoting Willis v. Midland Risk Ins. Co., 42 F.3d 607 (10th Cir. 1994); Buzzard v. Farmers Ins. Co., 824 P.2d 1105 (Okla. 1991)). "An investigation does not meet this standard if (1) the manner of investigation hints at a sham defense or otherwise suggests that material facts were overlooked, or (2) the insurer intentionally disregarded undisputed facts supporting the insured's claim." Id. (quoting Sims v. Great Am. Life Ins. Co., 469 F.3d 870 (10th Cir. 2006)).

The evidence in this case supports the notion that State Farm did not conduct fair, thorough, and unbiased investigations, but instead engaged in a purposeful and deliberate scheme that increased the number of claim denials, even in the absence of sufficient evidence to support such denials. That is, State Farm intentionally overlooked material facts and created a sham defense, such that summary judgment on Plaintiff's bad faith and punitive damages claim would be contrary to the interests of justice.

A. STATE FARM BREACHED THE DUTY OF GOOD FAITH AND FAIR DEALING.

An insurance company's breach of the duty of good faith and fair dealing (or "bad faith") is an "independent and intentional tort" in Oklahoma. *See* McCorkle v. Great Atlantic Ins. Co., 637 P.2d 583, 587 (Okla. 1981). The duty of good faith and fair dealing requires the insurer to conduct a thorough and fair investigation, analysis, and evaluation of the insured's claim. *See, e.g.,* Buzzard at 1109. "[I]t is essential that an insurer fully inquire into possible bases that might support the insured's claim" before denying it. Egan v. Mutual of Omaha Ins. Co., 620 P.2d 141, 145 (Cal. 1979); *see also* Willis at 613 (citing State Farm Fire & Case Co. v. Barton, 897 F.2d 729 (4th Cir. 1990) for the

proposition that evidence that an insurer used its investigation to support the denial of a claim, rather than attempting to learn the truth, will support a jury verdict of bad faith and punitive damages). Once the insurer has come to a full understanding of the insured's damages, it must place a value on those damages that will fairly and reasonably compensate the insured. "[T]he essence of the intentional tort of bad faith…is the insurer's unreasonable, bad-faith conduct, including the unjustified withholding of payment due under a policy, and if there is conflicting evidence from which different inferences may be drawn regarding the reasonableness of insurer's conduct, then **what is reasonable is always a question to be determined by the trier of fact** by a consideration of the circumstances in each case." McCorkle at 587 (emphasis added).

1. State Farm's Conduct was Unreasonable.

State Farm grossly mischaracterized the history of Plaintiff's claim in its Motion by conveniently omitting crucial details that demonstrate State Farm acted in bad faith. Defendant attempts to paint a picture in which this lawsuit arose out of a simple claim denial that Plaintiff is angry did not go his way. Plaintiff is angry, not because of a simple claim denial, but because of the evidence in this case showing that State Farm was engaged in a scheme to deny roof claims without putting any honest, sincere, or "good faith" effort into investigating whether their insureds' roofs actually required repair or replacement.

In a bad faith claim, "the decisive questions are whether [the insurer's] denial of coverage was based on a good-faith reason at the time it decided to deny coverage, and also whether [it] conducted an investigation reasonably appropriate under the

circumstances to determine the validity of [the] claim." Bannister v. State Farm Mut. Auto. Ins. Co., 692 F.3d 1117, 1127 (10th Cir. 2012). State Farm did not satisfy either element, such that summary judgment is improper.

a) State Farm did not conduct an adequate investigation.

"Oklahoma law imposes on Defendant an obligation to undertake an investigation reasonable under the circumstances before it denies Plaintiff's claim." Matlock v. Texas Life Ins. Co., 404 F. Supp. 2d 1307, 1314 (W.D. Okla. 2005). "An inadequate investigation by the insurance company may give rise to an inference of bad faith, requiring the question to be determined by a jury." Hall v. Globe Life Ins. Co., 968 P.2d 1263, 1265 (Okla. Civ. App. 1998) (citing Oulds v. Principal Mut. Life Ins. Co., 6 F.3d 1431 (10th Cir. 1993)); *see also* Crews v. Shelter Ins. Co., 393 F. Supp. 2d 1170, 1177 (W.D. Okla. 2005) ("If the insurer fails to conduct an adequate investigation of a claim, its belief that the claim is insufficient may not be reasonable.") (quoting Willis, *supra*.)

"When a plaintiff bases a bad faith claim on an inadequate investigation theory, 'the insured must make a showing that material facts were overlooked or that a more thorough investigation would have produced relevant information.'" Sellman v. AMEX Assur. Co., 274 Fed. Appx. 655, 658 (10th Cir. 2008) (quoting Timberlake Constr. Co. v. U.S. Fid. & Guar. Co., 71 F.3d 335 (10th Cir. 1995)). There is a disturbing amount of evidence in this case and across an entire segment of State Farm's claims department that saving money by turning a blind eye to their own hail recognition training became an end in itself. The truth revealed through an honest and thorough investigation would have

dictated that Plaintiff's claim be paid. Clearly, however, State Farm was not interested in being a "good neighbor" to its insureds.

As demonstrated above, State Farm engaged in bad faith claim handling by: (1) drastically reducing the amount of training provided to field adjusters and sending a field adjuster who had never felt hail damage to conduct an inspection for hail [*compare, e.g.,* Add'l Fact Nos. 9-13 *with* Add'l Fact No. 28]; (2) stripping field adjusters of their ability to authorize roof replacements due to hail damage because State Farm was "paying for too many roof claims" [Add'l Fact No. 29]; (3) instructing field adjusters not to use chalk to circle spots they thought might be hail damage [Add'l Fact No. 31]; (4) requiring field adjusters to send pictures of the roofs via text or email so Draper could decide whether or not to pay, a method which ignores State Farm's training materials and the expection of Section Manager Sharon Arnold that hail damage identification must include a tactile examination [Add'l Fact Nos. 5 & 30];[1] (5) purposefully omitting consultations with Draper from the claim file [Add'l Fact No. 31]; and (6) using the term "wear and tear" (which is not a covered cause of damage) to describe "old hail damage" (which is) [Add'l Fact No. 32]. [*See also* Exhibit 17, Lanier depo., 44:11-24, 47:16-48:10; 78:2-79:15, 97:6-98:22, 110:25-111:15, 120:9-17, 123:24-124:22.] No one can honestly say this is a reasonable way to conduct an investigation.

[1] This was so, even though bruising and other hail damage is not always identified in photographs. [Add'l Fact No. 3.] And, Draper's coverage decision was final, even if the field adjuster **on the roof** disagreed with Draper's assessment of the damage **in the photos**. [Add'l Fact No. 31.]

b) State Farm did not have a justifiable basis for denying Plaintiff's claim.

An insurer "does not breach the duty of good faith by refusing to pay a claim or by litigating a dispute with its insured if there is a 'legitimate dispute' as to coverage…and the insurer's position is 'reasonable and legitimate.'" Timberlake Constr. at 343 (quoting Thompson v. Shelter Mut. Ins., 875 F.2d 1460 (10th Cir. 1989); Manis v. Hartford Fire Ins. Co., 681 P.2d 760 (Okla. 1984)). However, this "will not act as an impenetrable shield against a valid claim of bad faith" in situations where the alleged "dispute" arises from a wholly inadequate investigation. *See* id.

Any argument from State Farm that there is a "legitimate dispute" to the reasonableness of its investigation must be rejected. As demonstrated above, State Farm sent an under-trained and inexperienced field adjuster to conduct *one* inspection of Plaintiff's roof [Add'l Fact Nos. 8-13]; ignored evidence provided by Plaintiff's roofer [Resp. to Fact Nos. 10-11]; refused to conduct a second investigation in violation of its own policy [Add'l Fact No. 20]; and relied on the opinion of someone who never even stepped foot or put hands on Plaintiff's roof to deny the claim [Resp. to Fact Nos. 7-8; Add'l Fact No. 30]. These specific facts, combined with State Farm's general approach to claims handling under Draper, provide an ample foundation for a jury to find that the investigation was a sham, and the outcome was predetermined. *See also, e.g.,* CBP Partners, LLC v. Netherlands Ins. Co., 2013 WL 12092312 at *5 (W.D. Okla. 2013) ("[T]he inadequacy of an insurer's investigation [and] the indifference or arbitrariness shown by an insurer during the claims-handling process…are factors a jury may consider

in determining whether an insurer has violated its implied duty of good faith and fair dealing."). An investigation simply does not meet the standard of being "reasonably appropriate under the circumstances" where, as here, "(1) the manner of investigation hints at a sham defense or otherwise suggests that material facts were overlooked, or (2) the insurer intentionally disregarded undisputed facts supporting the insured's claim." *See* Sims at 891 (citing Oulds at 1442).

Although State Farm attempts to argue that it did not act in bad faith because it believed there was a "legitimate dispute" at the time its performance was requested, the record clearly shows otherwise. Indeed, State Farm's defense must fail for the same reasons as the defendant's in Willis, *to wit*:

> The Oklahoma courts have recognized that there can be disagreements between an insurer and its insured on a variety of matters such as the insurable interest, extent of coverage, cause of loss, amount of loss, or breach of policy conditions. **The error in Midland's argument is that it does not take into account either its questionable legal position…, or the substantial evidence of inadequacy of its investigation**; Willis presented evidence concerning the investigation of the claim from which a jury could reasonably conclude that the insurer acted in bad faith in conducting the investigation.

Id. at 614 (internal citations omitted). In the absence of any meaningful investigation, State Farm could not have possibly formed a "reasonable belief" that Plaintiff's roof claim was "legally or factually insufficient." *See* Crews at 1177. State Farm obviously never had any intention of paying Plaintiff's claim, because "they were paying for too many roof claims." [*See* Exhibit 17, Lanier depo., 44:11-24.]

B. PUNITIVE DAMAGES ARE WARRANTED.

Punitive damages are available under Oklahoma law where, as here, "there is competent evidence of a reckless disregard by the defendant of the plaintiff's rights from which malice and evil intent may be inferred." Badillo v. Mid Century Ins. Co., 121 P.3d 1080, 1106 (Okla. 2005). "One acts with reckless disregard if he was either aware, or did not care, that there was a substantial and unnecessary risk that his conduct would cause serious injury to others…. [T]he conduct must have been unreasonable under the circumstances, and also there must have been a high probability that the conduct would cause serious harm to another person." Therrien v. Target Corp., 617 F.3d 1242, 1259 (10th Cir. 2010) (internal quotations, citations, and alterations omitted).

A jury may award punitive damages based on "[t]he seriousness of the hazard to the public arising from the defendant's misconduct," "[t]he duration of the misconduct and any concealment of it," "[t]he degree of the defendant's awareness of the hazard," "[t]he attitude and conduct of the defendant upon discovery of the misconduct…," and "the number and level of employees involved in causing or concealing the misconduct." 23 O.S. § 9.1(A)(1), (3), (4), (5) & (6). Evidence exists as to all of these factors in this case.

Furthermore, "punitive damages, like compensatory damages, do not stand alone as a separate cause of action; they constitute an element of damage subject to proof in connection with [Plaintiff's] negligence claim." Deela v. Annett Holdings, Inc., 2019 WL 55580095 at *2 (E.D. Okla. 2019) (citing Nelson v. Am. Hometown Publ'g, Inc., 333 P.3d 962 (Okla. Civ. App. 2014)) (internal quotations and alterations omitted). "[T]here is little danger of prejudice in waiting for the facts to be presented to the jury. A decision regarding

a punitive damages instruction can be made at that time." Id. (quoting Longoria v. Khachatryan, 2016 WL 5372831 (N.D. Okla. Sept. 26, 2016)). Indeed, this is the prudent course of action, as "proof for punitive damages will probably overlap with that of the underlying cause of action." *See* Rodebush v. Okla. Nursing Homes, Ltd., 867 P.2d 1241, 1247-8 (Okla. 1993).

CONCLUSION

Because Plaintiff has established the elements necessary to bring claims for bad faith and punitive damages, and because many genuine issues of material fact are in dispute, Plaintiff respectfully requests that State Farm's Motion for Partial Summary Judgment be denied in its entirety.

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CERTIFICATE OF SERVICE

☑ I hereby certify that on July 29, 2022, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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