

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

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No. 6:22-cv-00158

Pollard Memorial United Methodist Church,
Plaintiff,

v.
Church Mutual Insurance Co.,
Defendant.

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ORDER

Before the court are motions to strike certain opinions of expert witnesses (Docs. 19, 20, and 23) and defendant's motion for summary judgment (Doc. 22). The court has considered the parties' briefing and denies the motions to strike and defendant's motion for summary judgment on plaintiff's breach of contract and Texas Insurance Code § 542 claims. Defendant's motion for summary judgment is granted, however, on plaintiff's Texas Insurance Code § 541, Texas Deceptive Trade Practices Act, and breach of duty of good faith and fair dealing claims (collectively the "bad-faith" claims).

Summary judgment is appropriate when 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). In showing that there is no dispute of material fact, the movant must identify the portions of pleadings, depositions, answers to interrogatories, admissions, and affidavits that demonstrate an absence of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The nonmovant must then set forth specific facts showing the existence of a genuine issue for trial. *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998).

"[E]xtra-contractual tort claims pursuant to the Texas Insurance Code and the [Deceptive Trade Practices Act] require the same predicate for recovery as bad faith causes of action." *Lawson v. Potomac Ins. Co.*, 1998 WL 641809, at *4 (N.D. Tex. Sept. 14,

1998) (citing *Higginbotham v. State Farm Mut. Auto. Ins. Co.*, 103 F.3d 456, 460 (5th Cir. 1997)). To succeed on a bad-faith claim, the insured must establish that there was no reasonable basis for the insurer to deny payment of the claim and that the insurer knew, or should have known, that there was no reasonable basis for such denial. *Higginbotham*, 103 F.3d at 459.

Here, plaintiff has not produced evidence to create a triable issue on whether insurer Church Mutual’s conduct was unreasonable following the April 2020 hail storm. The unrebutted evidence in the summary-judgment record shows the following: After the hail storm and plaintiff’s claim, Church Mutual retained a public adjuster, Robert Bullard. Based on Bullard’s investigation, Church Mutual concluded that the claim required payment of \$62,028.73 in covered damages. Doc. 1-4 at 8. When plaintiff retained its own public adjuster and represented that it was entitled to \$1,171,672.85 on the claim, Church Mutual sought additional opinions from engineers Ian Ray and Justin Donaldson. Those additional experts pointed to causes of loss not covered by the policy. Their findings constituted at least a reasonable basis—even if it ultimately proves to be unpersuasive to the factfinder in this case—for the insurer to deny plaintiff’s demand for a higher payment amount.

Plaintiff cites cases such as *Universe Life Ins. Co. v. Giles*, 950 S.W.2d 48, 56 n.5 (Tex. 1997) to argue that “an insurer cannot manufacture a bona fide coverage dispute by conducting an unreasonable investigation . . . to shield itself from bad faith liability.” Doc. 30 at 27–28. But those are not the facts or reasonable conclusions that could be drawn from the facts in the summary-judgment record here. It is undisputed that Church Mutual sent at least three experts to investigate the storm damage. Plaintiff brings no evidence that those investigations were biased or pretextual. And the court concludes that the experts’ qualifications and assignments do not support an inference of bad faith or unreasonableness, even if the factfinder might ultimately disagree with their conclusions.

Instead, this case is similar to recent hail-insurance disputes in which insurers' motions for summary judgment on bad-faith claims were granted. *See, e.g., Aspen Specialty Ins. Co. v. Yin Invs. USA, LP*, 2021 WL 4666775, at *3 (E.D. Tex. Oct. 22, 2021) (insurer's reliance on its hail investigator's findings after multiple property inspections "was *prima facie* reasonable due to the nature, value, and complexity of the claim and the investigator's report"). Accordingly, defendant's motion for summary judgment is granted as to plaintiff's bad-faith claims.

So ordered by the court on October 31, 2023.



J. CAMPBELL BARKER
United States District Judge