

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

HENRY & LYDIA  
ANSAH,  
*Plaintiffs,*

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v.

CIVIL ACTION NO. 4:23-cv-02488

NATIONWIDE PROPERTY AND  
CASUALTY INSURANCE COMPANY,  
*Defendant.*

**DEFENDANT NATIONWIDE PROPERTY AND CASUALTY INSURANCE  
COMPANY’S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant Nationwide Property and Casualty Insurance Company (“Nationwide”) files this Reply in Support of its Motion for Summary Judgment, and would respectfully show the Court as follows:

**I. NATURE AND STAGE OF THE PROCEEDING**

1. This is a first-party insurance lawsuit in which Nationwide has moved for summary judgment on all of Plaintiffs’ claims.<sup>1</sup> Plaintiffs filed a response, opposing Nationwide’s motion.<sup>2</sup> Nationwide now files this reply in support of its motion.

**II. STATEMENT OF RELEVANT FACTS**

2. Nationwide incorporates by reference the facts as set out in its motion for summary judgment.<sup>3</sup>

**III. STATEMENT OF THE ISSUES TO BE RULED ON**

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<sup>1</sup> Doc. 19.

<sup>2</sup> Doc. 21.

<sup>3</sup> Doc. 19, at pp. 7-10 of 23, ¶¶ 2-7.

3. Nationwide incorporates by reference the issues and standard of review as set out in its motion for summary judgment.<sup>4</sup>

#### **IV. SUMMARY OF THE ARGUMENT**

4. Plaintiffs fail to show any dispute of material fact in their response and do not provide any evidence showing that summary judgment is unwarranted. Instead, Plaintiffs devote their response to conclusory arguments without factual support regarding the availability of the claimed contents and Nationwide's handling of that portion of the claim. Plaintiffs' arguments about their extra-contractual claims are similarly boilerplate, conclusory, and lack factual support. This Court should therefore grant Nationwide's summary-judgment motion because Plaintiffs fail to raise a genuine issue of fact.

#### **V. ARGUMENT**

##### **A. Plaintiffs have not shown a dispute of material fact as to whether summary judgment is appropriate.**

5. To defeat summary judgment, plaintiffs must "come forward with specific facts showing a genuine dispute for trial."<sup>5</sup> "The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports her claim."<sup>6</sup> "Mere conclusory allegations are not competent summary judgment evidence and are insufficient to defeat a motion for summary judgment."<sup>7</sup> "Moreover, unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary judgment evidence."<sup>8</sup>

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<sup>4</sup> *Id.* at pp. 7, 11-12 of 23, ¶¶ 9-10.

<sup>5</sup> *Houston v. Tex. Dep't of Agric.*, 17 F.4th 576, 581 (5th Cir. 2021).

<sup>6</sup> *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998).

<sup>7</sup> *Liberty Ins. Corp. v. Dixie Elec., L.L.C.*, 637 F. App'x 113, 116 (5th Cir. 2015).

<sup>8</sup> *Id.*; see also *Forsyth v. Barr*, 19 F.3d 1527, 1533 (5th Cir. 1994).

6. Plaintiffs concede that dwelling payments are not at issue and this case is only about contents.<sup>9</sup> In making their arguments about the contents portion of the claim, Plaintiffs have not shown any genuine dispute of material fact sufficient to overcome summary judgment. The only evidence Plaintiffs provide to oppose summary judgment is their contents spreadsheet—a list of various household items with claimed prices.<sup>10</sup> But Plaintiffs do not provide—and never have—any proof or documentation of damages to any of the listed items.

7. Plaintiffs argue, without evidence, that they made the contents available for inspection and made “reasonable efforts to document and preserve evidence of their losses.”<sup>11</sup> Plaintiffs’ discovery responses, as well as claim-stage appraisal communications, contradict this argument such that it does not present a genuine issue sufficient to avoid summary judgment. In discovery responses, Plaintiffs confirmed that the contents are unavailable for inspection and that they had no documentation of the claimed damages, such as photographs.<sup>12</sup> And an email from the contents appraisal process shows that both appraisers could not proceed because the contents had already been disposed of at that time, without any documentation, and Plaintiffs’ appraiser was merely proceeding under their unsupported contents spreadsheet.<sup>13</sup> Plaintiffs have not provided any evidence disputing these facts. The undisputed facts thus show that Nationwide never had a reasonable opportunity to evaluate Plaintiffs’ claimed contents damages.

8. Implicitly recognizing this deficiency—*i.e.*, that they failed to comply with the policy—Plaintiffs next argue that “Defendant breached the contract first.”<sup>14</sup> Under this argument,

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<sup>9</sup> Doc. 21, at pp. 5, 7-8 of 18, ¶¶ 2, 9.

<sup>10</sup> Doc. 21-2. This list is also accompanied by a business-records affidavit. Doc. 21-1.

<sup>11</sup> Doc. 21, at pp. 8-9 of 18, ¶¶ 11-13.

<sup>12</sup> Doc. 19-2, at pp. 100-01, 107-08 of 219.

<sup>13</sup> *Id.* at p. 88 of 219.

<sup>14</sup> Doc. 21, at p. 9 of 18, ¶ 14.

Plaintiffs suggest that Nationwide should have issued full payment for what they claimed in contents, without any proof or evidence of damage. That is not what the insurance policy provides. Rather, the policy explicitly requires Plaintiffs to make damaged property available for inspection, prepare an inventory with supporting documentation, and generally cooperate with the claim investigation.<sup>15</sup> Plaintiffs have not fulfilled these requirements, but they nonetheless demand payment for alleged contents damages for which they have provided no evidence or documentation. Plaintiffs have not shown a genuine factual dispute on this issue.

9. Plaintiffs also assert that Nationwide's motion provides inconsistent information about payments issued under Coverage C.<sup>16</sup> This is incorrect. Nationwide has issued \$40,812.15 in Coverage C payments, consisting of three payments: \$35,984.83 on July 26, 2022; \$1,930.96 on December 15, 2022; and \$2,896.36 on February 21, 2023.<sup>17</sup> These payments total \$40,812.15. \$35,984.83 represents just one of the Coverage C payments. The payment summary Plaintiffs cite to argue that Nationwide's motion was inconsistent *is Plaintiffs' own summary*, which was only current up to July 2022 and thus did not include the latter two payments, as Nationwide indicated in its motion.<sup>18</sup> Plaintiffs' claim of inconsistency lacks merit.

10. Plaintiffs have not shown any dispute of material fact regarding their contractual claims. Besides conclusory, unsupported statements, Plaintiffs' response does nothing to dispute that the claimed contents were unavailable for inspection and lacked any other kind of documentation of damage, preventing Nationwide from evaluating the claimed damage and

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<sup>15</sup> Doc. 20, at p. 53 of 72.

<sup>16</sup> Doc. 21, at p. 8 of 18, ¶ 10.

<sup>17</sup> Doc. 19-2, at pp. 7, 11, 30, 70-71, 73 of 219.

<sup>18</sup> *Id.* at p. 73 of 219; *see* Doc. 19, at p. 6 of 23.

preventing the appraisal process from moving forward. Plaintiffs demand payment without any proof of damages. Summary judgment is therefore appropriate on their contractual claims.

**B. Plaintiffs' extra-contractual and statutory arguments are conclusory and cannot survive summary judgment.**

11. Because Plaintiffs have no right to their claimed contents damages due to their failure to preserve or document any damage, summary judgment is also appropriate on their extra-contractual and statutory claims.<sup>19</sup> Plaintiffs nonetheless make generic and conclusory arguments that Nationwide violated extra-contractual common-law and statutory duties.<sup>20</sup> But like their contractual arguments, Plaintiffs have provided no evidence or facts to support their assertions of wrongdoing by Nationwide. The only evidence provided with their motion is their contents list and an accompanying business-records affidavit; neither is evidence that Nationwide violated any common-law or statutory duty. Plaintiffs cannot survive summary judgment on their extra-contractual and statutory claims by simply stating, without support, that Nationwide acted improperly.<sup>21</sup>

12. At various points in their response, Plaintiffs claim “[t]here is evidence” that Nationwide failed to explain its decision, conducted a wrongful and pretextual claim investigation, failed to timely make a claim decision, and violated the DTPA.<sup>22</sup> But Plaintiffs do not provide this evidence, cite to it in the record, or even say what it is. This is not sufficient to defeat summary judgment.

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<sup>19</sup> See, e.g., *Mag-Dolphus, Inc. v. Ohio Cas. Ins. Co.*, 906 F. Supp. 2d 642, 649 (S.D. Tex. 2012) (“Generally, an insured cannot maintain a common law bad faith claim where the breach of contract claim fails.”).

<sup>20</sup> Doc. 21, at pp. 12-17 of 18, ¶¶ 22-31.

<sup>21</sup> See, e.g., *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998) (“The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports her claim.”).

<sup>22</sup> Doc. 21, at pp. 14, 17 of 18, ¶¶ 25, 30.

13. Plaintiffs make various other unsupported arguments regarding their extra-contractual claims. For example, as to Plaintiffs' fraud claim, they argue there is a dispute of material fact as to purported misrepresentations by Nationwide.<sup>23</sup> Plaintiffs again fail to provide any factual support for this assertion. They have not provided any evidence with their motion or pointed to anything in the record identifying what the purported misrepresentation was, how it was false, and the existence of any resulting injury. Plaintiffs have likewise failed to provide or show any evidence of an independent injury regarding any of their other claims.

14. Plaintiffs cannot defeat summary judgment with unsupported, conclusory arguments. Their response relies on such arguments, and they have failed to show any dispute of material fact. Nationwide therefore respectfully requests this Court grant summary judgment as to each of Plaintiffs' claims.

## **VI. CONCLUSION AND PRAYER FOR RELIEF**

15. The undisputed record evidence entitles Nationwide to summary judgment on Plaintiffs' claims. Nationwide respectfully requests that the Court grant its Motion for Summary Judgment.

*(Signatures on following page.)*

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<sup>23</sup> *Id.* at p. 17 of 18, ¶ 31.

Respectfully submitted,

/s/ Patrick M. Kemp

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been served electronically via CM/ECF on this the 13<sup>th</sup> day of August, 2024 to:

Eric B. Dick  
Dick Law Firm, PLLC  
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/s/ Patrick M. Kemp  
Patrick M. Kemp