IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

BIGFOOT CO-OP A, INC., doing business as Park Madison Apartments, and PHG, INC., doing business as Pinnacle Roofing Consultants, Plaintiffs, v. NATIONWIDE MUTUAL INSURANCE COMPANY, Defendant.	)	Case No. 3:24-cv-00022-SMR-WPK ORDER ON MOTION FOR SUMMARY JUDGMENT

This dispute presents a question of insurance policy interpretation: whether an insurer properly applied the policy's "Increased Cost of Construction" provision to limit coverage for building code compliance costs following storm damage. The Court concludes the insurer's application of this provision was correct under the policy's unambiguous terms, and accordingly, grants the insurer's motion for summary judgment.

I. BACKGROUND

A hailstorm struck Burlington, Iowa on July 9, 2021, damaging five apartment buildings owned by Plaintiff Bigfoot Co-Op A, Inc. ("Bigfoot"). [ECF No. 1-1 ¶ 5]. Defendant Nationwide Mutual Insurance Company insured the property under Policy No. ACP CPP 3076479372 (the "Policy"). [ECF No. 27-2 ¶ 1]. When the parties could not agree on the amount payable for the loss, they invoked the Policy's appraisal provision.

The appraisal process unfolded in two stages. First, on July 11, 2023, the appraisers issued an initial award valuing the replacement cost at $478,116.42 and actual cash value at $430,043.66. *Id*. ¶ 5. This determination noted that the "decking condition" would be "determined/verified

later" pending confirmation from local authorities about applicable building code requirements. *Id*. ¶ 6.

After receiving documentation confirming the City of Burlington had adopted the 2021 International Building Code, which mandates specific standards for roof sheathing, the appraisers issued their final award on October 9, 2023. *Id*. ¶ 9. The Final Appraisal Award divided the loss into two components: (1) Buildings/Appraisal Estimate: $455,137.49 (replacement cost)/$447,943.08 (actual cash value); and (2) Code per Appraisal Estimate: $189,380.02 (both replacement cost and actual cash value). *Id*. ¶ 11.

Nationwide paid Plaintiffs $505,137.49, representing the full "Buildings" component ($455,137.49) plus $50,000 for the "Code" component. *Id*. ¶ 15. The $50,000 figure reflects $10,000 for each of the five damaged buildings, which Nationwide contends is the maximum allowable under the Policy's Increased Cost of Construction provision.

Bigfoot and Plaintiff PHG, Inc. (collectively, "Plaintiffs") filed this action alleging Nationwide breached the Policy by failing to pay the full $189,380.02 "Code" component of the Final Appraisal Award. They also assert a claim for first-party insurance bad faith. Nationwide now moves for summary judgment on both claims. [ECF No. 27].

II. DISCUSSION

A. Legal Standard

Summary judgment serves as an important mechanism that, when properly employed, streamlines litigation by resolving matters that require no fact-finding proceedings. A court may grant summary judgment 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). The materiality of a fact depends on whether it "may affect the outcome of the lawsuit." *TCF Nat'l Bank v. Mkt. Intelligence, Inc.*, 812 F.3d 701, 707 (8th Cir. 2016) (citation omitted). A

dispute qualifies as "genuine" if the evidence would permit a reasonable jury to return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986).

The summary judgment standard requires the Court to view the record in the light most favorable to the nonmoving party, drawing all reasonable inferences in that party's favor. *McGowen, Hurst, Clark & Smith, P.C. v. Com. Bank*, 11 F.4th 702, 710 (8th Cir. 2021) (citing *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc)). The burden falls on the nonmoving party to identify "specific facts" that create a genuine dispute precluding summary judgment; vague assertions of "metaphysical doubt as to the material facts" will not suffice. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986).

B. Analysis

1. The Policy Limits Code Compliance Coverage

The central question before the Court is whether Nationwide properly applied the Policy's Increased Cost of Construction ("ICC") provision to limit its liability for the "Code" component of the Final Appraisal Award to $50,000. Resolution of this issue requires examining the Policy language, determining whether the "Code" component falls within the scope of that provision, assessing Nationwide satisfied its payment obligations. The parties do not dispute the existence of code-related costs, but rather whether those costs are subject to the Policy's ICC limitation.

a. Unambiguous Policy Terms

Under Iowa law, which governs this diversity action, the construction and interpretation of an insurance policy presents a question of law for the court. *Johnson v. Farm Bureau Mut. Ins. Co*., 533 N.W.2d 203, 206 (Iowa 1995) (citation omitted). The touchstone of insurance policy interpretation is determining the parties' intent from the policy language. *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Farmland Mut. Ins. Co*., 568 N.W.2d 815, 818

(Iowa 1997) (citation omitted). When policy language is unambiguous, the court must enforce it as written. *Thomas v. Progressive Cas. Ins. Co.*, 749 N.W.2d 678, 682 (Iowa 2008).

The relevant Increased Cost of Construction provision in the Policy states:

> e. Increased Cost of Construction (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with the minimum standards of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage[.]
>
> (6) If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of $10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage[.]

[ECF No. 27-3 at 35]. This language unambiguously limits Nationwide's liability for increased costs incurred to comply with building code requirements to $10,000 per building. Because the five apartment buildings at issue are covered under a blanket limit of insurance, the maximum recovery for code compliance costs is $50,000. The provision specifies in direct terms how the coverage limitation applies, using a clear per-building structure that accommodates the Policy's blanket coverage arrangement.

b. Application to Code-Related Costs

The record establishes that the $189,380.02 "Code" component of the Final Appraisal Award falls within the scope of the ICC provision. This component represents costs necessitated by compliance with the City of Burlington's adoption of the 2021 International Building Code. Plaintiffs themselves acknowledge in their opposition that the ICC provision applies to increased costs of construction. [ECF No. 30 at 6].

Plaintiffs attempt to distinguish some portion of the "Code" component as representing replacement of pre-existing sheathing allegedly damaged by the storm, rather than merely the incremental cost of installing code-compliant thicker sheathing. This argument fails for two reasons.

First, Plaintiffs present no evidence that the pre-existing sheathing sustained direct storm damage rather than being replaced solely to meet code requirements. The affidavit of Miguel Alvarez, upon which Plaintiffs rely, contains no statement that the pre-existing sheathing was directly damaged by the storm. Alvarez merely confirms that the contractor "replaced the original sheathing on the Property with sheathing that complied with the 2021 IBC." [ECF No. 30-3 at 67]. This establishes only that replacement occurred to meet code requirements, not that storm damage necessitated the replacement.

Second, the Final Appraisal Award draws no distinction between damaged sheathing and code-required upgrades. Plaintiffs concede this point, acknowledging that the award "does not distinguish between the sheathing in place before the storm . . . nor does it account for the difference" between what was already in place and what the applicable code requires. *Id*. at 7. The Final Appraisal Award clearly separates "Buildings" costs from "Code" costs, with the latter representing costs specifically attributable to compliance with the applicable building code.

Iowa courts consistently enforce unambiguous insurance contracts according to their written terms. *Wakonda Club v. Selective Ins. Co. of Am.*, 973 N.W.2d 545, 549 (Iowa 2022). The ICC provision plainly applies to limit coverage for the "Code" component of the Final Appraisal Award to $10,000 per building, for a total of $50,000 across all five buildings.

c. The Binding Appraisal Award

Having failed to overcome the clear application of the ICC provision, Plaintiffs attempt to challenge the validity of the Final Appraisal Award itself. This argument fails both procedurally and substantively.

Procedurally, the attempt to invalidate the Final Appraisal Award contradicts the foundation of their own Complaint. Plaintiffs specifically alleged that Nationwide breached the Policy by failing to pay "the appraisal award issued by the appraisers . . . a total of $644,517.51." [ECF No. 1-1 ¶ 9]. After expressly relying on the Final Appraisal Award as the basis for their claims, Plaintiffs cannot now disavow that award simply because its structure proves disadvantageous to their position.

Substantively, Iowa law sets a high bar for invalidating an appraisal award. Such awards "will not be set aside unless the complaining party shows fraud, mistake or misfeasance on the part of an appraiser or umpire." *Yogeshwar, Inc. v. Soc'y Ins.*, 739 F. Supp. 3d 714, 731 (N.D. Iowa 2024) (citation omitted). Courts must apply "every reasonable presumption" in favor of an appraisal award's validity. *Walnut Creek Townhome Ass'n v. Depositors Ins. Co.*, 913 N.W.2d 80, 93 (Iowa 2018).

Plaintiffs contend that by separating the "Code" component, the appraisers "created an entirely new item of coverage which was not provided for under the Policy." [ECF No. 30 at 10]. This argument misconstrues the appraisal process. Under Iowa law, appraisers determine the amount of loss, not coverage questions. *See Taylor v. Farm Bureau Mut. Ins. Co.*, No. 07-1580, 2008 WL 4525496, at *4 (Iowa Ct. App. Oct. 1, 2008) ("An appraisal . . . establishes only the amount of a loss and not liability for the loss under the insurance policy."). By separating regular "Buildings" costs from "Code" costs, the appraisers facilitated applying the Policy's distinct coverage provisions to the appropriate categories of loss—they did not create new coverage.

Far from suggesting impropriety, the structure of the Final Appraisal Award reflects the appraisers' appropriate recognition that they were determining only the amount of loss, leaving coverage determinations to the Court. The award explicitly states it "does not consider any . . . provision/conditions of the above policy, which might affect the amount of the insurer's liability thereunder." [ECF No. 27-3 at 89]. This language demonstrates the appraisers' proper understanding of their limited role in the claims process.

Plaintiffs have presented no evidence of fraud, mistake, or misfeasance sufficient to overcome the strong presumption of validity accorded to the Final Appraisal Award. The award properly identifies and quantifies the distinct components of Plaintiffs' loss, and it remains valid and binding on the parties.

d. Conclusion on Contract Claim

The application of the ICC provision to the "Code" component of the Final Appraisal Award presents no genuine dispute of material fact. The Policy unambiguously limits coverage for increased costs of construction to $10,000 per building. The Final Appraisal Award specifically identified these code-related costs in a separate "Code" component totaling $189,380.02. Nationwide properly applied the Policy's limitation and paid the maximum allowable amount of $50,000 for this component, in addition to fully satisfying its obligation for the $455,137.49 "Buildings" component.

Plaintiffs have not demonstrated any basis for disregarding the Policy's clear limitation or invalidating the structure of the Final Appraisal Award. Their attempts to recharacterize portions of the "Code" component lack evidentiary support and contradict the award's plain organization. The Policy's terms, the Final Appraisal Award's structure, and Nationwide's payment align precisely as Iowa law requires. Accordingly, Nationwide is entitled to judgment as a matter of law on Plaintiffs' breach of contract claim.

2. No Basis for Bad Faith Liability

Under Iowa law, a first-party insurance bad faith claim requires proof of two essential elements: (1) the insurer had no reasonable basis for denying benefits under the policy, and (2) the insurer knew, or had reason to know, that its denial was without a reasonable basis. *Dolan v. Aid Ins. Co.*, 431 N.W.2d 790, 794 (Iowa 1988). An insurer defeats a bad faith claim by showing its position was "fairly debatable." *Bellville v. Farm Bureau Mut. Ins. Co.*, 702 N.W.2d 468, 473 (Iowa 2005). A claim is "fairly debatable" when "it is open to dispute on any logical basis." *Id.*

The Court's determination that Nationwide correctly applied the Policy's ICC provision to limit its liability for code-related costs necessarily defeats Plaintiffs' bad faith claim on the first element. Nationwide's interpretation and application of the Policy was not merely reasonable—it was correct.

Even if reasonable minds could differ on the Policy's interpretation, Nationwide would still prevail on the bad faith claim. The question of how to apply the ICC provision to the segregated "Code" component unquestionably presented a fairly debatable issue. The Policy's provisions, the structure of the Final Appraisal Award, and the categorization of code-related costs all presented legitimate interpretive questions that reasonable insurers might resolve differently. *See Thornton v. Am. Interstate Ins. Co.*, 897 N.W.2d 445, 465 (Iowa 2017) (defining "reasonable basis" as "'fairly debatable' as to either a matter of fact or law") (quoting *Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 483 (Iowa 2007)).

Under Iowa law, when an insurer has an objectively reasonable basis for its coverage position, a bad faith claim cannot succeed as a matter of law. *Rodda*, 734 N.W.2d at 483 ("Whether a claim is 'fairly debatable' can generally be determined by the court as a matter of law.") (citation omitted). Nationwide's interpretation of the Policy was correct, and the record contains no

evidence suggesting Nationwide knew or should have known it lacked a reasonable basis for its position. Accordingly, Nationwide is entitled to summary judgment on Plaintiffs' bad faith claim.

III. CONCLUSION

For the foregoing reasons, the Motion for Summary Judgment is GRANTED. [ECF No. 27]. The Court concludes that the Policy's Increased Cost of Construction provision unambiguously limits coverage for code-related costs to $10,000 per building, that this provision properly applies to the "Code" component of the Final Appraisal Award, and that Nationwide fully satisfied its payment obligations under the Policy.

IT IS SO ORDERED.

Dated this 21st day of April, 2025.

STEPHANIE M. ROSE, CHIEF JUDGE
UNITED STATES DISTRICT COURT