UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ST. MARK'S UNITED METHODIST CHURCH,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION NO. 7:24-CV-494
	§	
CHURCH MUTUAL INSURANCE COMPANY,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT'S MOTIONS TO STRIKE AND FOR SUMMARY JUDGMENT

Before the Court are Defendant Church Mutual Insurance Company's Motion to Strike Plaintiff St. Mark's United Methodist Church's Expert Michael Ogden (Dkt. No. 17) and Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56. (Dkt. No. 18). Having considered the Motions, Responses (Dkt. Nos. 19–20), Replies (Dkt. Nos. 24–25), Sur-Replies (Dkt. Nos. 26–27), and relevant evidence submitted by the parties, the Court will **GRANT** the Motion to Strike **IN PART** and **DENY** the Motion to Strike **IN PART**, and the Court will **GRANT** the Motion for Summary Judgment.

I. Factual and Procedural Background

On May 23, 2023, St. Mark's filed a claim under its operative policy (the "Policy") with Church Mutual for wind and hail damage allegedly sustained during an April 29, 2023, storm. (Dkt. Nos. 18 ¶ 4; 18-1). The Policy covers the "actual cash value" of the roof surfacing but excludes "cosmetic damage to roof surfacing by wind and/or hail" ("Cosmetic Damage Exclusion") and damage caused by "wear and tear," . . . "rust, or other corrosion, decay deterioration, hidden or latent defect," or other routine damage. (Dkt. Nos. 18-1 at 16, 74; 20-5 at

2).[1] On June 23, 2023, Church Mutual's independent adjuster inspected the church's roof and "noted hail damage to the main roof, a main roof extension, the gutters and downspouts on the front elevation, and water intrusion damage to the storage room and chapel." (Dkt. Nos. 20 at 2; 20-1). In his report, the inspector separated out cosmetic and deterioration damages from those covered by the storm. (Dkt. Nos. 20 at 2; 20-2 at 1–2). On July 19, 2023, Church Mutual sent St. Mark's a letter identifying the losses covered but noting that the damages were below the deductible, so Church Mutual would not issue any payment to St. Mark's. (Dkt. Nos. 18-3 at 3; 20-3).

Church Mutual then hired its own adjuster, The Claim Genius, to inspect the property. (Dkt. No. 20-4). The Claim Genius's report identified storm damages totaling $1,496,025.83 in replacement costs. *Id.* at 63. Church Mutual then hired a second independent adjuster, Marcus Phillips with U.S. Forensics, to inspect the property. (Dkt. No. 18-3). Mr. Phillips's report concluded that the claimed damage was not caused by the hail and wind storm. *Id.*; (Dkt. No. 18-3 at 9). On August 9, 2024, St. Mark's sent Church Mutual a Texas Insurance Code § 542A Notice Letter demanding payment of $1,496.025.83. (Dkt. No. 18-9).

On October 21, 2024, St. Mark's filed this lawsuit in the 464th Judicial District of Texas. (Dkt. No. 1-5). Church Mutual removed the lawsuit to this Court on November 22, 2024. (Dkt. No. 1). In the course of litigation, St. Mark's retained Michael Ogden as its causation and damages expert. (Dkt. Nos. 20 at 3; 20-6). On October 24, 2025, Church Mutual filed the two motions pending before this Court—the Motion to Strike Mr. Ogden's opinions and testimony, (Dkt. No. 17), and the Motion for Summary Judgment, (Dkt. No. 18). St. Mark's responded to both motions,

[1] All page citations in this Order refer to the page numbers assigned by the Court's CM/ECF system, not the document's internal pagination, when available.

(Dkt. Nos. 19, 20), Church Mutual replied, (Dkt. Nos. 24, 25), and St. Mark's filed a sur-reply to both motions, (Dkt. Nos. 26, 27). The Court now considers these motions.

II. Discussion

A. Motion to Strike

The Court first addresses Church Mutual's motion to strike the opinions and testimony of the plaintiff's retained causation and damages expert Michael Ogden under Federal Rule of Evidence 702. (Dkt. No. 17).

1. Standard of Review

> Federal Rule of Evidence 702 permits opinion testimony from a "qualified" expert if:
>
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> (b) the testimony is based on sufficient facts or data;
>
> (c) the testimony is the product of reliable principles and methods; and
>
> (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702. Defendants do not challenge Mr. Ogden's qualifications but rather ask the Court to strike his opinions as inadmissible under Rule 702 and *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 591 (1993) because they would not assist the trier of fact and are unreliable. (Dkt. No. 17 at 2). In *Daubert*, "the Supreme Court assigned to trial courts the responsibility of determining whether expert testimony under Rule 702 is 'not only relevant, but reliable.'" *Hathaway v. Bazany*, 507 F.3d 312, 317 (5th Cir. 2007) (quoting *Daubert*, 509 U.S. at 589). The court determines relevance by asking whether the expert testimony will assist the trier of fact to understand or determine a fact in issue. *See Bocanegra v. Vicmar Servs., Inc.*, 320 F.3d 581, 584 (5th Cir. 2003) (citing *Daubert*, 509 U.S. at 591–92).

The reliability determination requires the court to make "'a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.'" *Hathaway*, 507 F.3d at 317 (quoting *Daubert*, 509 U.S. at 592–93). In determining reliability, the court may consider "the extent to which a given technique can be tested, whether the technique is subject to peer review and publication, any known potential rate of error, the existence and maintenance of standards governing operation of the technique, and, finally, whether the method has been generally accepted in the relevant scientific community." *Id.* at 318 (citing *Daubert*, 509 U.S. at 593–94). "These factors are not mandatory or exclusive; the district court must decide whether the factors discussed in *Daubert* are appropriate, use them as a starting point, and then ascertain if other factors should be considered." *Id.* at 318 (citing *Black v. Food Lion*, 171 F.3d 308, 311–12 (5th Cir. 1999)). Another factor that may be considered is "[w]hether the expert has adequately accounted for obvious alternative explanations." Fed. R. Evid. 702 advisory committee's note (2000 Amendments); *see Guzman v. State Farm Lloyds*, 456 F. Supp. 3d 846, 852 (S.D. Tex. 2020). The trial court should take care not to apply the reliability factors too strictly and "transform a *Daubert* hearing into a trial on the merits." *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 250 (5th Cir. 2002). The court's role under *Daubert* is one of "gatekeeping" and is not intended to replace the adversary system: "'[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.'" *Id.* (quoting *Daubert*, 509 U.S. at 596); *Prepaid Wireless Servs, Inc. v. Southwestern Bell Wireless, Inc.*, No. M–00–302, 2002 WL 34367328, at *1 (S.D. Tex. July 23, 2002).

2. Analysis

Church Mutual makes three arguments regarding the alleged inadmissibility of Mr. Ogden's opinions and testimony: (1) Mr. Ogden's "functional damage" opinions are unreliable because he improperly defines the term "functional damage"; (2) Mr. Ogden failed to consider alternative causes of damage; and (3) Mr. Ogden did not include an Actual Cash Value (ACV) damages calculation as required under the Policy. (Dkt. Nos. 17 at 2; 19 at 2). The Court will analyze each argument in turn.

Church Mutual argues that Mr. Ogden applies an "extracontractual definition" of functional damage different from the one in the Policy, which makes his opinions about the type of damage sustained "misleading and inadmissible." (Dkt. No. 17 at 5, 8). Both Church Mutual and St. Mark's acknowledge that the Policy does not explicitly define "functional damage." (Dkt. Nos. 17 at 4; 19 at 7). The Policy defines "cosmetic damage" under the "Cosmetic Loss Exclusion" as follows:

> [C]osmetic damage means that the wind and/or hail caused marring, pitting, or other superficial damage that altered the appearance of the roof surfacing, but such damage does not prevent the roof from continuing to function as a barrier to entrance of the elements to the same extent as it did before the cosmetic damage occurred.

(Dkt. No. 17-1 at 54).

According to Church Mutual, "the Policy requires" functional damage to be "a *present, actual* impairment of the roof's ability to shed water or otherwise prevent the entry of elements." (Dkt. No. 17 at 5). Mr. Ogden defines functional damage as "the diminution in the roof's water-shedding capability or reduction in the expected long-term service life of the material." (Dkt. No. 17-2 at 9) (citation modified). Church Mutual emphasizes that "Mr. Ogden's opinions are not based on whether the roof *presently* fails to function as a barrier to the elements, but on whether hail impacts may, *over time*, reduce its service life or efficiency." (Dkt. No 17 at 5–6) (emphasis added). St. Mark's responds that Mr. Ogden's definition is based on "pages' worth of authoritative information regarding functional damage." (Dkt. No. 19 at 7). Just as Church Mutual presents its own definition of functional damage, St. Mark's argues, St. Mark's presents a definition of functional damage in the reliable, expert opinion of Mr. Ogden. *Id.* at 8.

The Court agrees with St. Mark's. Church Mutual relies heavily on *Collins v. Safeco Ins. Co. of Indiana*, but the Court finds that case inapposite. No. 3:18-CV-01788-X, 2020 WL 95488, at *7 (N.D. Tex. 2020); (Dkt. No. 17 at 6–7). In *Collins*, the Court excluded an expert's opinions because the policy's definition of cosmetic damage was "narrower" than the definition on which the expert relied. 2020 WL 95488, at *7. The Court concluded the expert improperly defined functional damage to include only "diminished water-shedding ability and a reduction to the life-expectancy of the roof," which caused the expert to treat "everything else" as cosmetic damage. *Id.*

Here, Mr. Ogden does not rely on an extra-contractual definition of cosmetic damage. (Dkt. No. 17-2). In fact, he does not even define cosmetic damage. *Id.* Moreover, because the Policy does not define functional damage, it is reasonable for Mr. Ogden to propose his own definition of functional damage, based on relevant, authoritative materials, just as Church Mutual's inspector did. (Dkt. Nos. 17-2 at 9). In fact, one of Church Mutual's inspection reports includes the almost identical definition of functional damage that Mr. Ogden includes in his report. (Dkt. Nos. 17-2 at 9; 18-3 at 11). As a result, Church Mutual's allegation that Mr. Ogden's causation opinions are unreliable based on his definition of functional damage is erroneous.

This case is more comparable to another one involving Church Mutual. *See Cleburne Training & Fitness, Inc. v. Church Mutual Ins. Co.*, NO. 3:24-CV-0410-B, 2025 WL 1083162, at *2–3 (N.D. Tex. Apr. 10, 2025). In *Cleburne Training*, the policy at issue involved a cosmetic damage limitation almost identical to the one in this case. *Id.* at *3. Distinguishing *Collins* and analogizing to another similar case, the court in *Cleburne Training* found that the expert reports at issue "would help the jury determine whether the policy limitation applies[, and] they do not confuse the trier of fact by applying a different definition of functional/cosmetic damages." *Id.* (citing *Aqua Vitae Trust v. Aix Specialty Insurance Company.* No. MO:21-CV-00072-DC, 2022 WL 2902724, at *5 (W.D. Tex. May 1, 2022)).

The same is true here. Mr. Ogden's definition of functional damage will not prevent the fact-finder from determining if the Policy's Cosmetic Loss Exclusion applies based on the evidence of alleged damage to the roof. *See id.* While the Court finds Mr. Ogden's causation opinions would be admissible on this ground, his causation opinions fail to overcome Church Mutual's second ground of attack.

Church Mutual next argues that Mr. Ogden failed to account for alternative causes of the alleged damage—specifically, "wear, tear, deterioration, manufacturing defects, improper installation, deferred maintenance, and pre-existing damage"—and that Mr. Ogden failed "to segregate hail damage" from these conditions, which are excluded under the Policy. (Dkt. No. 17 at 8). St. Mark's responds that Mr. Ogden considered alternative causes by reviewing the public adjuster's full file and the engineer's report. (Dkt. No. 19 at 11).

Church Mutual is correct; Mr. Ogden's considerations of these other reports are insufficient. Mr. Ogden includes no discussion in his report of "normal wear and tear" or any other cause that may have contributed to the roof damage, including its "age, prior condition, or any maintenance history." *Guzman*, 456 F. Supp. 3d at 853 (collecting cases); (Dkt. Nos. 17-2; 19 at 9). Like the expert in *Guzman*, Mr. Ogden "does not acknowledge that any other cause may have contributed to the roof's damage." *Guzman*, 456 F. Supp. 3d at 853; (Dkt. No. 17-2). Mr. Ogden's report includes no discussion of the roof's age, prior repairs to the roof, general deterioration of the materials, or any other possible source of damage to the roof. (Dkt. No. 17-2).

Church Mutual is also correct that Mr. Ogden did not separate covered from non-covered losses. Without identifying possible alternative causes, Mr. Ogden could not make the covered versus non-covered distinction in his estimates. (Dkt. No. 17-2). Additionally, for the Policy to cover interior water damage, the damage must be the result of a storm-caused opening. (Dkt. Nos. 17-3 at 4; 25 at 8). In his deposition, Mr. Ogden states that he did not identify any storm-created opening on the roof surface that would overcome this limitation such that the interior damage would be covered. (Dkt. No. 25-1 at 92:21–24). With that admission, Mr. Ogden fails to separate the claimed interior damage, as well. (Dkt. No. 17-2). Without this critical information, Mr. Ogden's causation opinions are unreliable and would not be helpful to the jury. *See Guzman*, 456 F. Supp. 3d at 853. As a result, Mr. Ogden's causation opinions and testimony are inadmissible.

Finally, Church Mutual argues Mr. Ogden's damages assessments were "not prepared in accordance with terms, conditions, or limitations outlined in the Policy." (Dkt. No. 17 at 11). Specifically, Mr. Ogden prepared a damages calculation based on a Replacement Cost Value even though the Policy provides coverage only on an Actual Cash Value basis. *Id.* According to Church Mutual, this different calculation will confuse the jury and constitutes a fundamental methodological error that renders Mr. Ogden's damages opinions inadmissible. *Id.* at 12.

In response, St. Mark's makes clear that Mr. Ogden "did include" an ACV calculation in his report, which Church Mutual's own expert confirmed during his deposition. (Dkt. No. 19 at 12–13). St. Mark's also avers that "[c]ounsel of record for both parties discussed this portions [sic] of Defendant's argument during a telephonic conference on November 7, 2025, and Defendant stated that it waived this argument." *Id.* at 12. Church Mutual does not address this alleged waiver or its original ACV arguments in the reply. (Dkt. No. 25). Having reviewed the record, the Court finds Mr. Ogden included an ACV calculation in his report and, therefore, finds his damages opinions and testimony reliable. (Dkt. 17-2 at 85).

Based on the foregoing, the Court excludes Mr. Ogden's causation opinions but not his damages opinions. Therefore, the Court GRANTS Church Mutual's Motion to Strike IN PART and DENIES the Motion IN PART.

B. Motion for Summary Judgment

St. Mark's asserts numerous claims against Church Mutual, including breach of contract, unfair settlement practices and non-prompt payment under Texas Insurance Code §§ 541.060(a), 541.151, 542.060, breach of the duty of good faith and fair dealing, violations of the Texas Deceptive Trade Practices Act ("DTPA") under Texas Business and Commerce Code § 17.41, and common law fraud. (Dkt. No. 5 at ¶¶ 35–65). Church Mutual moves for summary judgment on all claims. The Court finds that there is no genuine dispute of material fact as to any of the plaintiff's claims against the defendant and, therefore, GRANTS summary judgment on all claims.

1. Standard of Review

A district court must grant summary judgment when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a). A fact is material if it might affect the outcome of the lawsuit under the governing law and is genuinely in dispute only if a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A party moving for summary judgment has the initial responsibility of informing the court of the basis for its motion and identifying those portions of the pleadings and materials in the record, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); FED. R. CIV. P. 56(a), (c). Once the moving party carries its burden, the burden shifts to the nonmovant to go beyond the pleadings and provide specific facts showing the existence of a genuine issue for trial. *Celotex*, 477 U.S. at 324; FED. R. CIV. P. 56(c). In conducting its review of the summary judgment record, the court "may not make credibility determinations or weigh the evidence" and must resolve doubts and reasonable inferences regarding the facts in favor of the nonmoving party. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000); *Anderson*, 477 U.S. at 255; *Dean v. City of Shreveport*, 438 F.3d 448, 454 (5th Cir. 2006). However, the nonmovant cannot satisfy its burden with "conclusory allegations, speculation, and unsubstantiated assertions which are either entirely unsupported, or supported by a mere scintilla of evidence." *Chaney v. Dreyfus Serv. Corp.*, 595 F.3d 219, 229 (5th Cir. 2010); *see also Brown v. City of Houston*, 337 F.3d 539, 541 (5th Cir. 2003) ("Unsubstantiated assertions, improbable inferences, and unsupported speculation are not sufficient to defeat a motion for summary judgment.").

2. Breach of Contract

St. Mark's alleges that Church Mutual breached its insurance contract (i.e., the Policy) when Church Mutual denied St. Mark's coverage for alleged damage to the church roof caused by the April 2023 wind and hail storm. (Dkt. No. 5 ¶¶ 36–40). Church Mutual asserts that the breach of contract claim fails as a matter of law because the Policy's Cosmetic Loss Exclusion and "limitations on damages attributable to wear, tear, manufacturing defects, deterioration, [and] maintenance issues" apply to the alleged roof damage. (Dkt. No. 18 at 7). The court agrees with Church Mutual.

The elements of breach of contract in Texas[2] are "(1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages sustained by the plaintiff as a result of the breach." *Burbridge v. CitiMortgage, Inc.*, 37 F.4th 1049, 1051 (5th Cir. 2022). Under Texas law, a question of insurance coverage follows a specific burden-shifting framework. *JAW The Pointe, LLC v. Lexington Ins. Co.*, 460 S.W.3d 597, 603 (Tex. 2015). "Initially, the insured has the burden of establishing coverage under

[2] "Because this is a diversity case involving a Texas insurance contract, Texas insurance law and rules of contract interpretation apply." *Alaniz v. Sirius Int'l Ins. Corp.*, 626 F. App'x 73, 76 (5th Cir. 2015) (per curiam).

the terms of the policy." *Id.* (quoting *Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd's London,* 327 S.W.3d 118, 124 (Tex. 2010)). "To avoid liability, the insurer then has the burden to plead and prove that the loss falls within an exclusion to the policy's coverage." *Id.* (citing *Gilbert*, 327 S.W.3d at 124; Tex. Ins. Code § 554.002; Tex. R. Civ. P. 94). "If the insurer proves that an exclusion applies, the burden shifts back to the insured to show that an exception to the exclusion brings the claim back within coverage." *Id.* (quoting *Gilbert*, 327 S.W.3d at 124).

The parties agree that the Policy generally covers roof surfacing. (Dkt. Nos. 5 ¶ 7; 18 at 8; 18-1 at 16; 20 at 5). The burden having shifted back to the insurer, Church Mutual argues that the wind and hail damage at issue falls into the Policy's Cosmetic Loss Exception. (Dkt. No. 18 at 8). This exclusion, noted in the Policy as a "limitatio[n] on coverage for roof surfacing," provides:

> We will not pay for cosmetic damage to roof surfacing caused by wind and/or hail. For the purpose of the endorsement, cosmetic damage means that the wind and/or hail caused marring, pitting, or other superficial damage that altered the appearance of the roof surfacing, but such damage does not prevent the roof from continuing to function as a barrier to entrance of the elements to the same extent as it did before the cosmetic damage occurred.

(Dkt. No. 18-1 at 54).

According to Church Mutual, there is no evidence that hail "caused anything more than cosmetic changes" to the church's roof surfaces. (Dkt. No. 18 at 8). Church Mutual points to both the presuit investigation and the parties' experts to support this argument. *Id.* Approximately two months after the storm, Church Mutual inspected the property and retained Marcus Phillips, P.E. of U.S. Forensic, LLC to complete a second inspection. *Id.* at 3. On November 27, 2023, Mr. Phillips—joined by a representative of St. Mark's—inspected the church's roof. (Dkt. Nos. 18 at

3; 18-3 at 3, 10). In his report, Mr. Phillips concluded that all observable damage to the roof, as reported by St. Mark's, was not caused by hail or wind on or around April 2023. (Dkt. Nos. 18 at 3–4; 18-3 at 9). Rather, the shingles' damage was "the result of manufacturing defects and long-term heat and exposure-related weathering and deterioration" and "tree limbs located near the roof." (Dkt. No. 18-3 at 9). Additionally, the interior water damage near the gym was "the result of improper installation and age-related deterioration of building materials" rather than openings in the roof caused by the April 2023 storm. *Id.* On January 4, 2024, Church Mutual issued a partial denial of coverage letter, citing the Policy's exclusions for "wear and tear[,] . . . deterioration, hidden or latent defects," and cosmetic damage and attaching Mr. Phillips's report. (Dkt. No 18-3 at 3–6).

On March 24, the public adjuster hired by St. Mark's, The Claim Genius, sent Church Mutual a notice and proof of loss claiming wind and hail damage totaling $1,496.025.83. (Dkt. Nos. 18-5; 18-6). In subsequent communications with The Claim Genius's representative, Church Mutual stated, "No one is disputing hail impacts," but added "[Church Mutual is] indicating this is Cosmetic Damage which is Excluded." (Dkt. No. 18-8 at 1). Additionally, Church Mutual asked The Claim Genius to submit an engineer report contradicting Mr. Phillips's findings, but neither St. Mark's nor its public adjuster provided one—including when St. Mark's sent Church Mutual a Texas Insurance § 542A Notice Letter, demanding Church Mutual pay the $1,497,025.83. (Dkt. Nos. 18 at 5; 18-8 at 2–3; 18-9).

The only other evidence of causation that St. Mark's offers is its expert report of Mr. Ogden. *See supra* § II.A. As discussed above, the Court excludes Mr. Ogden's causation opinions because they fail to identify possible alternative causes and to segregate the covered and non-covered sources of damage. *Id.*

"When an insurer introduces other plausible causes of damages," which Church Mutual has done, "the burden shifts to the insured to introduce evidence to exclude those causes." *Hilltop Church of Nazarene v. Church Mutual Ins. Co.*, No. 6:21-cv-00322, 2022 WL 17823931, at *4 (E.D. Tex. Dec. 20, 2022) (collecting cases). Other than The Claim Genius's report, St. Mark's offers no other evidence addressing why the alleged damage was *not* caused by wear, tear, age, manufacturing defects, and overall degradation. But The Claim Genius's report only identifies the alleged damage, attributes it to hail and wind damage, and assigns a cost for repair. (Dkt. No. 18-6 at 4, 66). St. Mark's has no evidence that all the damage for which it seeks to recover was *only* from hail or wind during the April 2023 storm. Without that evidence, St. Mark's has failed to meet its burden to "segregate its damage." *Hilltop Church*, 2022 WL 17823931, at *4. Accordingly, the Court grants summary judgment on the breach of contract claim.

3. Extracontractual Claims

In addition to the breach of contract claim, St. Mark's asserts extracontractual claims against Church Mutual. Specifically, St. Mark's asserts violations of the Texas Insurance Code, the duty of good faith, and the Texas Deceptive Trade Practices Act (DTPA), and a claims for common-law fraud. (Dkt. No. 5 at ¶¶ 41–65).

a. Claims under the Texas Insurance Code, the Duty of Good Faith, and the DTPA

"An insured generally cannot recover benefits for an insurer's statutory violations if the insured does not have a right to those benefits under the policy." *Hilltop Church*, 2022 WL 17823931, at *4 (citing *USAA Texas Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 490 (Tex. 2018)). Under *Menchaca*, the Texas Supreme Court has established "two paths" to recover damages caused by an insurer's statutory violation. *In re State Farm Mutual Auto. Ins. Co.*, 629 S.W.3d 866, 872–73 (Tex. 2021). An insured must establish either "a right to receive benefits under the policy" or "an injury independent of a right to benefits." *Id.* at 872 (quoting *Menchaca*, 545 S.W.3d at 500). In other words, "[a]n insured cannot recover *any* damages based on an insurer's statutory violation if the insured had no right to receive benefits under the policy and sustained no injury independent of a right to benefits." *Menchaca*, 545 S.W.3d at 489.

"St. Mark's does not allege independent injury in this case, but rather that it is entitled to benefits under the Policy." (Dkt. No. 20 at 12–13). Therefore, St. Mark's "staked its extracontractual claims on a breach-of-contract theory." *Hilltop Church*, 2022 WL 17823931, at *4. Because its breach-of-contract claim fails, St. Mark's extracontractual claims (other than common law fraud) also fail. *See id.* at *4–5 (applying *Menchaca* to grant summary judgment on the insured's extracontractual claims under the Texas Insurance Code, the Texas Deceptive Trade Practices Act, and the duty of good faith). Accordingly, the Court grants summary judgment for Church Mutual on the claims under the Texas Insurance Code, the Deceptive Trade Practices Act, and the duty of good faith. *See id.*

b. Common Law Fraud

St. Mark's also asserts a fraud claim against Church Mutual. Under Texas law, the elements of common law fraud are:

> (1) that a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury.

Saenz v. Gomez, 899 F.3d 384, 391 (5th Cir. 2018) (quoting *In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 758 (Tex. 2001)).

In its response, St. Mark's grounds its fraud claim on one statement by Church Mutual. (Dkt. No. 20 at 11–12). St. Mark's points to Church Mutual's statement in the January 4, 2024, letter denying coverage in part under the Policy's exclusion for age, wear, and tear. *Id.*; (Dkt. No. 20-5 at 1–2). St. Mark's further points to Church Mutual's prior "extensive repairs to the Property's roofing system following the 2012 hailstorm." (Dkt. Nos. 20 at 11; 20-7 at 2–5). Because portions of the church roof had been repaired within approximately the last 10 years, St. Mark's asserts that Church Mutual's statement denying coverage for age, wear, and tear "constitutes a knowing, or at least a reckless, misrepresentation of material information, made with the intent that St. Mark's accept their failure to pay damages owed on the Claim." (Dkt. No. 20 at 11–12). Church Mutual adds that the reference St. Mark's makes to an adjuster's statement that the roof was "in overall good condition" in 2012 is "wholly inadequate to support a fraud claim." (Dkt. Nos. 20 at 11–12; 24 at 7).

Church Mutual is correct. St. Mark's fails to present sufficient evidence that Church Mutual made "a material, false representation" or that St. Mark's "relied on an alleged misrepresentation by" Church Mutual. *Farris v. State Farm Lloyds*, No. H-19-3872, 2021 WL 398489, at *7 (S.D. Tex. Feb. 4, 2021). The fact that St. Mark's disagrees with the adjuster's assessment and Church Mutual's denial of coverage on those grounds does not mean that the statements were fraudulent. *See Thomas v. State Farm Lloyds*, 218 F. Supp. 3d 506, 519 (N.D. Tex. 2016) ("The gist of Plaintiffs' argument is that Defendants misrepresented the Policy to them by explaining that it did not cover their claim. . . . [But] [t]hat was a patently true statement and therefore cannot form the basis of a fraud claim."). As explained above, the court agrees that St. Mark's is not entitled to coverage under the Policy because they cannot show that all of their damages were caused by the storm. Without more, St. Mark's has not provided evidence of any fraudulent activity by Church Mutual. *See id.*; *see also Ansah v. Nationwide Property and Casualty Ins. Co.*, NO. H-23-2488, 2024 WL 3929895, at *5 (S.D. Tex. Aug. 23, 2024).

St. Mark's has failed to raise a genuine issue of material fact in support of its fraud claim. Accordingly, Church Mutual is entitled to summary judgment on this claim.

III. Conclusion

The Court finds that Mr. Ogden's expert report is not admissible as to his causation opinions, but it is admissible as to his damages opinions.

The Court also finds that St. Mark's has not provided legally sufficient evidence to demonstrate a genuine issue of material fact for its breach of contract, Texas Insurance Code, DTPA, duty of good faith, and common law fraud claims. As a result, the Court considers summary judgment proper on all of St. Mark's claims against Church Mutual.

IT IS HEREBY ORDERED that Church Mutual's Motion to Strike, (Dkt. No. 17), is GRANTED IN PART and DENIED IN PART.

IT IS ALSO HEREBY ORDERED that Church Mutual's Motion for Summary Judgment, (Dkt. No. 18), is GRANTED.

A final judgment will issue separately.

SO ORDERED February 2, 2026, at McAllen, Texas.

Randy Crane
Chief United States District Judge