IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

WYLIE METHODIST CHURCH,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 1:24-CV-00134-H-BU
	§	
CHURCH MUTUAL INSURANCE COMPANY S.I.,	§	
	§	
	§	
	§	
Defendant.	§	

FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff, Wylie Methodist Church (Wylie), filed its Complaint in state court seeking to hold Defendant Church Mutual Insurance Co., S.I. (Church Mutual) liable for its mishandling of Wylie's claim under the insurance policy. Church Mutual removed this case to federal court, invoking this Court's diversity jurisdiction. *See* Dkt. No. 1. United States District Judge James Wesley Hendrix then transferred the case to the undersigned for pretrial management. Dkt. No. 4; 28 U.S.C. § 636(b)(1)(A). Now before the Court is Church Mutual's Motion to Strike Expert Testimony of Bryan Hill, Dkt. No. 42, and Motion for Summary Judgment, Dkt. No. 39. All Motions are fully briefed and ripe for review. Dkt. Nos. 44, 46, 49, 51.

For the reasons explained below, the undersigned RECOMMENDS the Court DENY Church Mutual's Motion to Strike and its Motion for Summary Judgment in full.

I. JURISDICTION

The Court has subject-matter jurisdiction under 28 U.S.C. § 1332(a) because the parties are diverse and the amount in controversy exceeds $75,000. *See* Dkt. Nos. 9, 10. Specifically, Wylie is a nonprofit corporation with its state of incorporation in Texas and principal place of business in Texas. *See* Dkt. No. 12 at 1–2. Church Mutual is a stock insurance corporation with its state of incorporation in Wisconsin and principal place of business in Wisconsin. *Id*. at 2–3. Therefore, Wylie is deemed a citizen of Texas whereas Church Mutual is deemed a citizen of Wisconsin. *See* 28 U.S.C. § 1332(c)(1). This was the case both at the time of filing and at the time of removal. Dkt. Nos. 12-2 at 2, 12-3 at 3. The parties have alleged complete diversity. *See MidCap Media Fin., L.L.C. v. Pathway Data, Inc.*, 929 F.3d 310, 313 (5th Cir. 20l9).

Wylie's state-court pleading sought monetary relief of at least $1,000,000. Dkt. No. 1-5 at 3. Further, Wylie has provided expert testimony that the cost to repair the Property is $9,261,720.76. Dkt. No. 41-20 at 11. This is sufficient evidence to satisfy the amount-in-controversy requirement. *See Mudge v. Riverside Transportation, Inc.*, No. 2:23-CV-159-BR, 2025 WL 1931946, at *5 (N.D. Tex. July 14, 2025).

Venue is proper in the Northern District of Texas, Abilene Division, because the property at issue is in Taylor County, Texas. 28 U.S.C. §1391 (b)(2). The undersigned has the authority to enter these Findings, Conclusions, and Recommendations after United States District Court Judge James Wesley Hendrix transferred this case to the undersigned for pretrial management. Dkt. No. 4; 28 U.S.C. § 636(b)(1)(B). The parties have not consented to the undersigned exercising the full jurisdiction of this Court. Dkt. No. 10 at 5.

II. FACTUAL BACKGROUND

Wylie purchased insurance policy number 0421796-25-531952 (the Policy) from Church Mutual for its church building located at 3430 Antilley Road, Abilene, Texas 79606 (the Property). Dkt. Nos. 39 at 1; 42 at 6. The Policy was effective from February 14, 2023, to February 14, 2024. Dkt. No. 42 at 6. The Policy excludes damage resulting from wear and tear, corrosion, deterioration, cosmetic damage, continuous or repeated seepage or leakage of water, and faulty, inadequate, or defective workmanship, repairs, construction, or maintenance. Dkt. No. 41–1 at 32–33, 46. The Policy includes a Plus Enhancement Endorsement which provides additional coverage up to $25,000 for interior water damage, regardless of cause. Dkt. Nos. 41–17 at 3; 41-1 at 65–66.

This claim and lawsuit arise from a hailstorm that occurred on or about May 7, 2023 (the May 2023 storm), and allegedly caused damage to the Property.[1] Dkt. No. 41–17 at 3.The Property consists of a 2-story structure and other buildings constructed in 1979. Dkt. No. 43–1 at 5. The main structure includes approximately 31,327 square feet of roof area. *Id*. The roofing system includes both upper and lower flat roof areas covered with modified bitumen (mod-bit). *Id*. at 6. At the time of the alleged loss, the mod-bit roofing was approximately 18 years old. *Id*.

[1] The storm that allegedly caused the damage started on May 7, 2023, and continued into the early morning hours of May 8, 2023. Dkt. No. 43-1 at 19.

Wylie had been insured by Church Mutual for approximately six years at the time of the loss.[2] Dkt. No. 47 at 12. Church Mutual inspected the Property in 2018 and again in 2022, and found no hail or wind damage to the buildings. Dkt. No. 44 at 17. In March 2023, just months before the alleged loss, Church Mutual completed a drone survey of the Property. Dkt. No. 42 at 18. This survey provided the following description of the roof's condition: "The entire roof membrane is showing signs of degradation and deterioration due to age and environmental factors and may be nearing the end of its useful life." *Id*. Following the May 2023 storm, Wylie submitted a claim for hail damage that allegedly resulted from that storm. *See* Dkt. No. 41–7.

A. Pre-suit Findings

Church Mutual began an investigation, retaining independent adjuster James Adams of Leading Edge Claims Service. Dkt. No. 42 at 7. Adams inspected the Property on June 20, 2023, one month after the May 2023 storm; he reported that the roof was 18 years old, that it was nearing the end of its life span, and that any hail damage was cosmetic. Dkt. Nos. 41–3 at 1–2; 42 at 7. Adams prepared an estimate for repairs to the exterior of a shed totaling $1,216.01. Dkt. No. 41–3 at 3. He noted the building was in "good overall condition and is well maintained." *Id*. at 1. Furthermore, Adams reported that "no apparent prior damage was found" other than the noted hail damage in the claim. *Id*. at 2. At the time of the initial inspection, Wylie confirmed it did not have any interior leaking. *Id*. at 2; Dkt. No. 41–8 at 1. Nevertheless, Adams recommended that Church Mutual hire an engineer

[2] Wylie asserts as an undisputed fact that, "Plaintiff has been insured by Defendant since 2017." Dkt. No. 47 at 12. The alleged loss occurred in 2023.

"to further evaluate the potential hail damage to the Church roof surfacing, including whether such damage was cosmetic or functional in nature." Dkt. No. 42 at 8.

Acting on Adams's recommendation, Church Mutual then retained engineer Aaron Lam of ProNet Group who reinspected the Property on July 19, 2023. *Id*. Lam concluded there was no hail damage to the mod-bit roof membrane. Dkt. No. 41–14 at 34–35. He noted significant deterioration of the roof due to long-term environmental exposure, poor installation, material quality, foot traffic, and ponding water which resulted in roof leaks. *Id*. at 35, 41. Lam observed granule loss and exposed asphalt above the roof membrane. *Id*. at 36.

On August 16, 2023, Wylie's public adjuster, Chelle McConnel, filed an Adjusting Report disputing Lam's findings and criticized his engineering report. Dkt. No. 42 at 9–10. Wylie then retained Ricky V. Richards, P.E., of Norseman Engineering, who inspected the roof and prepared a report stating it was an older roof with advanced weathering of the granular surface throughout much of the roof (the Norseman Report). *Id*. at 10; Dkt. No. 43–3 at 5, 7. The roof was in poor condition with significant weathering and loss of granules. Dkt. No. 42 at 10. Richards observed a "wide variety of hail impact marks . . . varied in age and size and patterns were random," which was "consistent with an older roof that had experienced multiple large hail events over a period of several years." *Id*. at 7, 10. The Norseman Report ultimately recommended replacement due to cumulative hail damage that contributed to accelerated deterioration. *Id*. at 11.

Church Mutual then had Lam review the Norseman Report and prepare a supplemental report, which he submitted on January 17, 2024. *Id*. at 10. Lam disputed much of the Norseman Report, including its conclusions about the size of splatter marks, damage thresholds, and whether the aged condition of the roof reduced its resistance to hail damage. *Id*. at 10–11. Ultimately, Lam reaffirmed that the roof had no hail damage. *Id*. at 11.

On February 14, 2024, Church Mutual denied the claim, concluding that "the [mod-bit] roofing had not sustained damage caused by hail," and the metal roofing sustained only cosmetic damage. *Id*. at 11. Church Mutal also concluded that the interior water damage was "attributable to age-related deterioration, ponding of water, and mechanical wear, which were not covered perils." *Id*. Finally, it concluded that "[t]he only covered loss was interior water damage, for which the previous $25,000 payment was issued under the Plus Enhancement Endorsement." *Id*.

B. Wylie files suit and hires engineer Bryan Hill

Following denial of the claim, Wylie filed suit in state court on July 19, 2024, and Church Mutual removed the action to federal court on August 19, 2024. Dkt. No. 1. On October 2, 2024, Wylie retained engineer Bryan Hill as its causation expert in this litigation. Dkt. No. 43–1 at 3. Hill inspected the Property and opined that the mod-bit roof "more likely than not" suffered functional damage during the May 2023 storm requiring full replacement. *Id*. at 3, 17, 19, 22, 26. Hill concluded that a full replacement would "bring the property back to its pre-loss condition." *Id*. at 27. Although in his report Hill never explicitly stated that the May 2023 hailstorm was the sole cause of the damage, he provided the following testimony during his deposition:

> I do feel that hail caused impacts and damage to this roof. I think that is the sole cause of damage to this roof and water integration infiltration that breached the roof and caused water to come in.

Dkt. No. 45–1 at 106. Wylie relies on Hill's report and testimony for its sole cause theory and for its evaluation of replacement cost value (RCV) and actual cash value (ACV). Dkt. Nos. 41–20 at 4; 47 at 16.

C. Wylie's Claims in this Action

Wylie asserts the following causes of action: (1) breach of contract; (2) violations of the Texas Insurance Code; (3) violations of the Texas Deceptive Trade Practices Act (DTPA); and (4) breach of the duty of good faith and fair dealing. Dkt. No. 1–5 at 5–9. Wylie's expert Monty Stone provided an RCV measure totaling $9,261,720.76 and an ACV measure totaling $9,005,643.87. Dkt. No. 41-20 at 5. ACV is the RCV minus depreciation. *Id*. This estimate includes a $176,310.06 for demand surge and a $792,442.78 for unforeseens and calls for the full replacement of the roof. *Id*. at 11.

III. MOTION TO EXCLUDE

A. Motion-to-Exclude Standard

"The admissibility of expert testimony is governed by the same rules, whether at trial or on summary judgment." *First United Fin. Corp. v. U.S. Fid. & Guar. Co.*, 96 F.3d 135, 136–37 (5th Cir. 1996). Federal Rule of Evidence 702 governs the admission of expert testimony and provides:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise 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.

Rule 702 charges the trial judge with a gatekeeping obligation to ensure that any and all testimony based on scientific, technical, or other specialized knowledge "is not only relevant, but reliable." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993). The relevance of an expert's testimony depends on whether their knowledge would be helpful to the trier of fact. *Daubert*, 509 U.S. at 591.

All other requirements under the Federal Rules and the *Daubert* factors go towards an expert's reliability. *See Burst v. Shell Oil Co.*, 104 F. Supp. 3d 773, 777–78 (E.D. La. 2015). Further, "[t]he reliability analysis applies to all aspects of an expert's testimony: the methodology, the facts underlying the expert's opinion, the link between the facts and the conclusion, et alia." *Knight v. Kirby Inland Marine Inc.*, 482 F.3d 347, 355 (5th Cir. 2007) (quoting *Heller v. Shaw Indust., Inc.*, 167 F.3d 146, 155 (3d Cir. 1999)). "A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997).

As to an expert's methodology, the court's gatekeeping obligation requires it "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.'" *Bear Ranch, L.L.C. v. Heartbrand Beef, Inc.*, 885 F.3d 794, 802 (5th Cir. 2018) (quoting *Daubert*, 509 U.S. at 592–93). "This requires some objective, independent validation of the expert's methodology." *Moore v. Ashland Chemical Inc.*, 151 F.3d 269, 276 (5th Cir. 1998). The expert's assurances as to the validity of his methodology are insufficient. *Id.*

As to the facts underlying an expert's opinion, "[w]here an expert's opinion is based on insufficient information, the analysis is unreliable." *Paz v. Brush Engineered Materials, Inc.*, 555 F.3d 383, 388 (5th Cir. 2009). Expert opinions that are unsupported by data, are self-contradicted, or are based on incorrect assumptions must be excluded. *United States Upon Rel. of Tennessee Valley Auth. v. Easements & Rts.-of-Way Over 3.94 Acres of Land, More or Less, in DeSoto Cnty., Mississippi*, 701 F. Supp. 3d 500, 508 (N.D. Miss. 2023) (*citing Guile v. United States*, 422 F.3d 221, 227 (5th Cir. 2005)). Although trained experts commonly extrapolate from existing data, "nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert." *Joiner*, 522 U.S. at 146; *see also Guile*, 422 F.3d at 227 (finding that expert opinion which is unsupported by data and contradicts expert's earlier statement will not assist a jury or support its verdict).

But not every critique of an expert or their reasoning goes toward the admissibility of their testimony. Generally, "questions relating to the bases and sources of an expert's opinion affect the weight to be assigned that opinion rather than its admissibility and should be left for the jury's consideration." *Viterbo v. Dow Chem. Co.*, 826 F.2d 420, 422 (5th Cir. 1987). "The focus, of course, must be solely on principles and methodology, not on the conclusions that they generate." *Daubert*, 509 U.S. at 595. In most cases, "shaky but admissible" expert evidence is best addressed by "[v]igorous cross-examination, presentation of contrary evidence, and careful instructions on the burden of proof." *Id.* at 596. Thus, "the rejection of expert testimony is the exception rather than the rule." *Puga v. RCX Sols., Inc.*, 922 F.3d 285, 294 (5th Cir. 2019) (quoting Fed. R. Evid. 702 advisory committee's notes (2000)) (internal quotation marks omitted).

B. The Parties' Arguments

Church Mutual argues that Hill's opinion—that the May 7 storm was the sole cause of damage to the Property and required complete replacement of the roofs—is unreliable due to insufficient underlying facts and data and use of a flawed methodology. Dkt. No. 42 at 15. Specifically, Church Mutual argues that Hill's sole-cause opinion "ignores alternative (*i.e.*, excluded or non-covered) causes of damage." *Id*. at 16–17. Church Mutual complains that Hill "declined to rule out age, deterioration, and wear and tear, instead stating that he does not consider granule loss resulting from wear and tear to be damage at all[.]" *Id*. at 18. Hill's failure to rule out these excluded or non-covered causes of damage renders his sole-cause opinion unsupported and speculative. *Id*. at 15, 20.

Additionally, Church Mutual insists that Hill's methodology was "grossly deficient" because he only took three core samples of two-to-three inches in diameter and extrapolated from those small samples that the entire 30,000 square foot roof needed to be replaced.[3] *Id*. at 20–22. Church Mutual challenges Hill's assumption that these three

[3] Hill conceded that more analysis was required to determine the full extent of necessary repairs. Dkt. No. 42 at 20–22.

samples constitute a representative sample of the entire roof. *Id*. Finally, Church Mutual argues that Hill's opinion that all of the lightweight insulating concrete needed to be replaced is based solely on Hill's say-so and is thus nothing more than *ipse dixit*. *Id*. at 23.

Wylie responds that Hill's report is well-supported, based on reliable methodology, and reflects that Hill "meticulously segregated non-storm damage [and] ruled out other potential causes of loss, such as aging and prior storm events." Dkt. No. 44 at 8–9. Wylie insists that Church Mutual's objections to Hill's sole-cause theory go to Hill's credibility, if anything, rather than a faulty methodology. *Id*. at 16. As such, the appropriate remedy is vigorous cross-examination and allowing the jury to decide the issues of credibility and accuracy. *Id*. at 7.

In reply, Church Mutual emphasizes that it "does not dispute that the May 7, 2023 storm caused *some* damage." Dkt. No. 51 at 3. Rather, it argues that "Hill fails entirely to provide any reasonable basis for his conclusion that the alleged damage was caused by the May 7, 2023 storm to the exclusion of other causes of loss." *Id*. at 4. Church Mutual highlights "substantial evidence of pre-existing damage" from its own experts that rebut Hill's findings and conclusions. *Id*. at 5–6. In summarizing their concern with Hill's testimony, Church Mutual states that:

> the issue is not that Hill did not consider alternative causes of loss at all or that he failed to exclude every possible cause . . . but rather, the key concern is that Hill's failure to 'carefully consider alternative causes,' causes to which other experts (including Plaintiff's first engineer) specifically attributed damage, which 'renders his opinion little more than speculation.'

Id. at 6.

C. Discussion and Analysis

When an expert offers an opinion as to causation, "[a] necessary ingredient of such theorizing . . . is the exclusion of alternative causes." *Michaels v. Avitech, Inc.*, 202 F.3d 746, 753 (5th Cir. 2000). Thus, a court must consider "whether the expert 'adequately accounted for obvious alternative explanations.'" *Guzman v. State Farm Lloyds*, 456 F. Supp. 3d 846, 852 (S.D. Tex. 2020) (quoting Fed. R. Evid. 702 advisory committee's notes (2000)). At the same time, admission of an expert's opinions does not require the expert to rule out every possible alternative cause. *See Dalton v. C. R. Bard, Inc.*, No. 3:19-CV-2484-D, 2020 WL 1307965, at *5 (N.D. Tex. Mar. 19, 2020); *accord Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 265 (4th Cir. 1999); *Heller v. Shaw Indus., Inc.*, 167 F.3d 146, 156 (3d Cir. 1999). "Typically, an expert must 'wholly fail[ ] to consider alternative causes of the damage' before a court will exclude his testimony on the basis that he did not examine other potential causes." *Buttross v. Great Lakes Ins. SE*, No. 1:22-CV-086-H-BU, 2024 WL 50421, at *3 (N.D. Tex. Jan. 4, 2024) (Hendrix, J.) (quoting *Hub Tex., LLC v. Arch Specialty Ins. Co.*, No. 5:21-CV-180-H-BQ, 2023 WL 2772052, at *6 (N.D. Tex. Mar. 21, 2023). "[O]ther possible alternative causes affect the weight—not the admissibility—of an expert's testimony, unless the expert can provide *no* explanation for ruling out such alternative causes at trial." *Dalton,* 2020 WL 1307965, at *5 (quoting *Chrastecky v. C. R. Bard*, Inc., No. A-19-CV-1240-LY-SH, 2020 WL 748182, at *6 (W.D. Tex. Feb. 14, 2020) (internal quotation marks omitted)).

Church Mutual does not claim that Hill failed to consider *any* other alternatives. Nor could it. Regardless of Hill's conclusions, he had access to a wealth of data, to which he applied some form of methodology, including his consideration and elimination of other causes for the claimed damage.[4]

Hill's report recounts his on-site inspection and detailed findings of granule displacement, spherical hail indentations, exposed bitumen and fiber reinforcement, and bruised or fractured membranes at hail impact sites. Dkt. No. 43–1 at 10. He explained how darker bitumen, burnish marks, partially exposed fibers, and debris in surface cracks are used to distinguish older hail damage from more recent damage. *Id*. at 16–17. He explained his conclusion that the May 2023 storm was the cause of damage and how he eliminated pre-existing conditions. *Id*.

Hill detailed his analysis of the core samples and moisture readings. *Id*. at 3, 7, 10, 25, 46–47, 63–65, 70, 74. He explained how these analyses revealed a pattern inconsistent with pre-existing conditions and that the membrane's appearance was inconsistent with pre-existing deterioration. *Id*. at 13. He considered and eliminated as causes of damage condensation from HVAC drain lines and ponding. *Id*. at 14–15.

Hill discussed the roof's life expectancy and considered previous roof inspections, which found no hail or wind damage. *Id*. at 5. He conducted a 10-year survey of hail events

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[4] In a nutshell, Hill opines that granule loss caused by hail is fundamentally different than granule loss due to age and wear and tear. Dkt. Nos. 43–1 at 9–10, 23, 26; 45–1 at 116–19, 130–31. Unlike age degradation, he opines that large hail disperses the granules "significantly," penetrates the bitumen, and can fracture the membrane and fiber reinforcement. Dkt. No. 45–1 at 116. This, he says, allows water to intrude. He concludes that water would not have intruded inside the Property if there existed only age-related granule loss. *Id*. at 131–32. But he suggests this type of granule loss will not typically cause a roofing system to fail, as it did here. *Id*. at 130–31. Furthermore, Hill explains why spot-repair is impractical due to the density of impacts and the water-compromised integrity of the light weight insulating concrete. Dkt. No. 43–1 at 23–25.

in the area and considered the nature and proximity of each to the Property, the size of hail, the wind velocity and direction, and how that data correlated with his physical findings. *Id*. at 5–9, 14, 16.

Hill considered and eliminated pre-existing water leaks, sealant repairs, and older interior water stains. *Id*. at 5, 15. He explained how the timelines, water intrusion patterns, and moisture testing eliminated pre-existing deterioration as a likely cause. *Id*. at 11–12. He distinguished acute hail damage from progressive aging. *Id*. at 11. And he discussed relevant industry research that supported his analyses. *Id*. at 12.

Hill's deposition largely tracks his report, describing his speaking with several church staff, including those involved in building maintenance and the kitchen staff. Dkt. No. 45–1 at 42–43. Staff showed him previous repairs and assisted him in isolating older damage from newer damage. *Id*. Hill performed tactile inspections of impact marks, separately marked non-hail mechanical damage, and explained how weather data, damage patterns, burnish marks, and other hail signatures point to the May 2023 storm as the likely cause of damage and not other storms. *Id*. at 52–53, 69–83, 131–32.

Hill detailed his findings on moistures levels, core samples, how moisture affects the structural integrity of lightweight insulating concrete, and why he believed a full roof replacement was necessary. *Id*. at 86, 89, 91–96, 109–10. He explained how he eliminated ponding and condensation as causes. *Id*. at 102–05, 107, 115. He explained his disagreement with the Norseman Report and how granule loss due to deterioration differs from granule loss due to large hail strikes. *Id*. at 114–19.

All told, Hill's report considers and rejects age-related deterioration six times or more and concludes that, at most, it played a minimal role in this loss. Dkt. No. 43–1 at 4, 9–13, 24–25. Hill acknowledged the roof is "a little bit older," "more susceptible to damage from hail," and experienced some granule loss from age. Dkt. No. 45–1 at 115, 117. But he disagrees that age played any role in the damage caused by *this* storm and believes this roof would have otherwise lasted another 10 to 20 years. *Id*. at 115.

It is clear, then, why Church Mutual argues that "the issue is not that Hill did not consider causes of loss *at all* or that he failed to exclude every possible cause of loss[.]" Dkt. No. 51 at 6. Instead, Church Mutual emphasizes, "the key concern is that Hill's failure to 'carefully consider alternative causes,' causes to which other experts (including Plaintiff's first engineer) specifically attributed alternative causes damage, which 'renders his opinion little more than speculation.'"[5] *Id*. (citing *McNabney v. Lab'y Corp. of Am.*, 153 F. App'x 293, 295 (5th Cir. 2005) (in turn citing *E.I. du Pont de Nemours & Co., Inc. v. Robinson,* 923 S.W.2d 549, 559 (Tex. 1995) ("An expert who is trying to find a cause of something should carefully consider alternative causes.") (internal citation omitted))).

Despite the detail in Hill's report and testimony, Church Mutual argues that his sole-cause opinion "ignores alternative (*i.e*., excluded or non-covered) causes of damage" and that he "declined to rule out age, deterioration, and wear and tear, instead stating that he

[5] The undersigned can find no distinction in the caselaw between the requirement that an expert "consider" alternative causes versus that he "carefully consider" alternative causes. *McNabney* and *Robinson*, cited by Church Mutual, both involved experts who *wholly* failed to consider alternative causes. And despite those courts' use of the adverb "carefully," there is nothing to suggest they intended to create a higher level of consideration that experts must engage in. Thus, Church Mutual's argument must be that while Hill considered alternative causes, he did so inadequately.

does not consider granule loss resulting from wear and tear to be damage at all[.]" Dkt. No. 42 at 16–18. To illustrate this perceived problem, Church Mutual cites to Hill's testimony:

> Q: Is granule loss due to age wear and tear deterioration, is that damage in your opinion?
>
> A: No.
>
> Q: So granule loss that's caused by hail, that would be damage, but granule loss caused by wear and tear or other -- or age and deterioration, that's not damage?
>
> A: The manufacturer puts a granule cover on this to protect the bitumen. When you have normal wear and tear granules, those are slight granules that come off the surface. When you have a hail impact and it -- and gives a nice spherical impact where the granules are dispersed off that surface significantly, then you do have the physical damage to that element that now UV rays will start to deteriorate it. There is granule loss that occurs through normal wear and tear . . . [s]o, again, I -- I think, but for the hail, this roof would've lasted.
>
> Q: So, again, it's your opinion that if there's granules, I mean severe granule loss by wear and tear, that's not damaged, but granule loss from hail is? That's your opinion.
>
> A: When you expose the bitumen to UV rays, it starts to deteriorate. And extreme granule loss is either a manufacturing defect or, you know, from wear and tear, or it's a roof that's -- that's very, very old. And -- and 18 years for a mod-bit roof is not very, very old.
>
> Q: So is it your opinion that there was any granule -- did you see any granule loss to this roof that was wear and tear or age deterioration?
>
> A: Sure. Yeah. You -- you've got some granular loss, but it's -- every single roof, I mean, as soon as you install it, you get granule loss. I mean, you could take a blower after you're done putting in a mod-bit roof that's brand new, and you can blow granules off because you've -- you've walked on it. Because you've unrolled the rolls. Because they were in the back of a truck. They were moved up with a forklift. They were set on the roof. They've been manipulated. You're going to have granule loss from day one. That's wear and tear. Granule loss is -- is much different, ma'am.

> ***
>
> Q: Okay. But granule loss due to wear and tear or age and deterioration is not damage?
>
> A: Typically, wear and tear is not going to have the -- a similar granule loss as hail would. Wind, windborne debris, can cause granule loss, and -- and that can result in functional damage hail can. But just typical wear and tear, I – I don't – I don't -- I don't see that. They're designed for wear and tear.

Dkt. No. 45–1 at 116–19.

Church Mutual seizes on this testimony to argue that while Hill concedes the roof shows granule loss due to age, deterioration, and wear and tear, he refused to call it "damage," and hence he failed to rule out these other potential causes of damage. Dkt. No. 42 at 18 (Hill declined to rule out age, deterioration, and wear and tear, instead stating that he does not consider granule loss resulting from wear and tear to be damage at all[.]).

As Wylie argues, the facts in this case track those in *Hub Texas*, a case involving an insurance dispute about hail damage. No. 5:21-CV-180-H-BQ, 2023 WL 2772052, at *1 (N.D. Tex. Mar. 21, 2023). There, the Court addressed the defendant's motion to exclude the plaintiff's causation expert for "fail[ing] to consider and/or eliminate" the possibility of damage from non-hail causes. *Id.* at 5. The Court rejected this argument because the expert's report "gave reasoned explanations for discounting[] other potential sources of the damage." *Id.*

The Court noted that the defendant's challenge came against the backdrop of courts "routinely reject[ing] challenges to the admissibility of expert testimony based on arguments that the expert failed to take into account certain data in forming his or her opinions." *Id.* at 8 (quoting *Patton v. Metro. Lloyds Ins. Co. of Tex.*, No. 5:21-CV-074-H, 2022 WL

2898946, at *6 (N.D. Tex. Feb. 14, 2022) (Hendrix, J.) (internal quotation marks omitted)). The Court found that the facts did not warrant an exception to that general rule, stating "this [was] not a case where an expert wholly failed to consider alternative causes of the damage." *Id.* at 6 (citing in contrast, *Guzman*, 456 F. Supp. 3d at 852–53). The same is true here.

The Court in *Hub Texas* reached its conclusion by homing in on the reasoning and methodology underlying the expert's conclusion. *Id.* at 5–7. It recounted how the expert personally observed the Property during a site visit—as Hill did—and then described how the expert's observations on that visit—including observations of splatter marks, as Hill observed—allowed the expert to rule out other potential causes based on the physical characteristics of the damage. *Id.* at 6. Hill similarly based his opinions, in large part, on the physical characteristics he observed during his inspection, all of which he documented and explained.

Hill's report and fuller testimony give context to what at first appears to be a semantics stand-off about what is "damage." Church Mutual's attorney examined Hill repeatedly at deposition about his definition of "damage." *See* Dkt. No. 45–1 at 45–49, 116–19. These lines of questioning clearly reflect a disagreement about the definition of "damage" in this context, and whether it includes functional damage, mechanical damage, cosmetic damage, or any other type of damage. Regardless, and unable to move Hill from his definition, Church Mutual's attorney eventually states, "We'll stop that line of questioning. I'm not understanding your answers, so we can just move on." *Id*. at 119.

While Hill's intransigence was undoubtedly frustrating to Church Mutual's attorney, Church Mutual fails to demonstrate how Hill's testimony reflects a failure to consider alternative causes. The test here is not whether Hill refused to be cornered into saying that granule loss from age, wear and tear, and deterioration are "damage." The test is whether he "gave reasoned explanations for discounting[ ] other potential sources of the damage." *Hub Texas*, 2023 WL 11859631 at *5. Hill did so. Church Mutual's attorney also thoroughly examined Hill about his opinion that deterioration caused by age and wear and tear had no role in causing the damages Wylie seeks.

Still, reasoned explanations are not necessarily correct or persuasive explanations. Time will tell. "[I]t is the role of the adversarial system, not the court, to highlight weak evidence.'" *Patton,* 2022 WL 2898946, at *3 (quoting *Primrose Operating Co. v. Nat'l Am. Ins. Co.*, 382 F.3d 546, 562 (5th Cir. 2004)).

Ultimately, Church Mutual concedes Hill possesses the expertise and qualifications to render an opinion on the causation of damage to roofs, including by hail. Dkt. No. 51 at 3. It also appears to concede that Hill considered, on some level, deterioration caused by age, wear, and tear. *Id*. at 6. But it simply insists that he failed to *adequately* consider and eliminate those alternative causes. *Id*.

The undersigned cannot find—given Hill's qualifications, expertise, sampling and detailed inspection of the roof, and use of widely accepted techniques, including burnish marks, granule displacement, core sampling, and others—that his opinions are wholly without support, that he lacked sufficient facts or data to render those opinions, or that his methods left an analytical gap between the data and his opinions. Whether those opinions will stand the test of vigorous cross examination is another issue altogether.[6]

As in *Hub City*, the undersigned finds that Hill did not "wholly fail[] to consider alternative causes of the damage." 2023 WL 2772052, at *6. Church Mutual is correct that, "conclusions and methodologies are not entirely distinct from one another." *Joiner*, 522 U.S. at 146. But this is not a case of *ipse dixit* where the opinion is baseless and difficult to challenge. On its face, Hill's report "shows adequate due diligence and reasoning to be more than conclusory." *Patton,* 2022 WL 2898946, at *5. Hill's method "seems to use deductive reasoning in narrowing down the possible causes" of damage and provides more than a "bare assertion that they were considered and ruled them out. *Id.* at *6. (internal quotation marks omitted). Regardless of what one may think of Hill's conclusions, those conclusions do not appear to have been made without adequate data or without application of a methodology that at least claims to have included a consideration of alternative causes, including those highlighted by Church Mutual. Even Church Mutual concedes this much.

To the extent there are weaknesses in Hill's consideration of alternative causes, Church Mutual has aptly demonstrated an ability to exploit those during cross-examination, and certainly will again.[7] But for now, Wylie is not required to demonstrate that Hill is

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[6] Among other challenges, Church Mutual argues that Hill's selection of only three core samples of 2–3 inches in diameter out of a 30,000 square foot roof reflects an inadequate methodology and consideration of other causes. Dkt. Nos. 42 at 21–22; 51 at 8. Hill opines that the number and size of the core samples were sufficient and explains why he selected the areas he did. Church Mutual's expert will disagree. But both testimonies will assist the trier of fact in resolving the question of which damages were caused by the May 2023 storm.

[7] Inextricably intertwined with Church Mutual's motion is a critical—and as of yet, unresolved—factual dispute as to the true condition of the roof immediately prior to the May 2023 storm. To be sure, Hill's conclusion—that nothing in the previous 18 years contributed to the damage Wylie claims—toes the line

correct. It only needs to demonstrate by a preponderance of the evidence that his opinions are reliable. The undersigned finds that Wylie has sufficiently made this demonstration for purposes of admissibility.

For these reasons, the undersigned finds that Wylie has established by a preponderance of the evidence that Hill's opinions are reliable and that he adequately considered the possibility of alternative causes. Accordingly, the undersigned RECOMMENDS that the Court deny Church Mutual's Motion to Strike Expert Testimony of Bryan Hill, Dkt. No. 42.

IV. MOTION FOR SUMMARY JUDGMENT

Having addressed Church Mutual's Motion to Exclude, the undersigned now turns to its Motion for Summary Judgment.

A. Summary-Judgment Standard

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). "A genuine dispute of material fact exists if a reasonable jury could enter a verdict for the non-moving party." *Doe v. Edgewood Indep. Sch. Dist.*, 964 F.3d 351, 358 (5th Cir. 2020). The moving party "bears the initial responsibility of . . . demonstrat[ing] the absence of a genuine issue of material fact." *Jones v. United States*, 936 F.3d 318, 321 (5th Cir. 2019) (cleaned up). Thus, the moving party must "identify those portions

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of credulity. But, at least at this juncture, the Court's job is not to decide which expert is correct or more credible. Whether this 18-year-old roof had no pre-existing damage or condition which contributed to the losses sought here is a factual dispute for the jury, not a basis to exclude Hill's testimony. Fed. R. Evid. 702 advisory committee's notes (2000)).

of [the record] which it believes demonstrate [that] absence." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

In evaluating a summary-judgment motion, the Court draws all reasonable inferences in the light most favorable to the nonmoving party. *Darden v. City of Fort Worth*, 880 F.3d 722, 727 (5th Cir. 2018). However, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986) (emphasis in original). "[A] fact is 'material' if its resolution could affect the outcome of the action." *Dyer v. Houston*, 964 F.3d 374, 379 (5th Cir. 2020) (citation and quotation marks omitted). A dispute is not genuine if the facts being asserted are "blatantly contradicted by the record so that no reasonable jury could believe [them]." *Scott v. Harris*, 550 U.S. 372, 380 (2007).

The Court must consider materials cited by the parties, but it may also consider other materials in the record. Fed. R. Civ. P. 56(c)(3). Nevertheless, Rule 56 does not impose a duty on the Court to "sift through the record in search of evidence" to support the nonmovant's opposition to the motion for summary judgment. *Ragas v. Tenn. Gas Pipeline Co.*, 136 F.3d 455, 458 (5th Cir. 1998) (quoting *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 915–16, n.7 (5th Cir. 1992)).

"[I]f the movant bears the burden of proof on an issue, either because he is the plaintiff or [ ] a defendant . . . asserting an affirmative defense, he must establish beyond peradventure all of the essential elements of the claim or defense to warrant judgment in his favor." *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986). "The court has noted that the 'beyond peradventure' standard is 'heavy.'" *Carolina Cas. Ins. Co. v. Sowell*, 603 F. Supp. 2d 914, 923–24 (N.D. Tex. 2009) (Fitzwater, C.J.) (quoting *Cont'l Cas. Co. v. St. Paul Fire & Marine Ins. Co.*, 2007 WL 2403656, at *10 (N.D. Tex. Aug. 23, 2007) (Fitzwater, J.)).

Once the movant has satisfied this burden, the burden shifts to the nonmovant to demonstrate that a genuine issue of material fact does exist and that the evidence, viewed in favor of the nonmovant, permits a jury verdict for the nonmovant. *Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 302 (5th Cir. 2020). The nonmovant must "go beyond the pleadings" and produce evidence showing that there is a genuine issue of fact. *Celotex*, 477 U.S. at 324. However, the non-moving party cannot overcome its burden by merely alleging legal conclusions or unsubstantiated assertions; instead, it must present affirmative evidence that supports the existence of a genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) ("[T]he purpose of summary judgment is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial"). The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Id*. at 586.

B. Discussion and Analysis

Because this Court has diversity jurisdiction, Texas law governs. *Greenwich Ins. Co. v. Capsco Indus., Inc.*, 934 F.3d 419, 422 (5th Cir. 2019). The undersigned will first address Wylie's breach-of-contract claim before turning to its extracontractual claims.

1. The Court should deny Church Mutual's motion for summary judgment on the breach-of-contract claim.

Church Mutual seeks summary judgment because it says Wylie has failed to segregate damages caused by the May 2023 hailstorm—which is covered—from damage caused by pre-existing deterioration due to age, wear, and tear—which is not. Dkt. No. 40 at 18–26. Wylie responds that it has no duty to segregate damages because *all* the damage it seeks was caused *solely* by the covered May 2023 storm. Dkt. No. 47 at 15.

Under Texas law, the elements of a breach-of-contract claim 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." *See, e.g.*, *Hilltop Church of the Nazarene v. Church Mutual Ins. Co.*, No. 6:21-cv-00322, 2022 WL 17823931 (Dec 20, 2022) (*citing Burbridge v. CitiMortgage, Inc.*, 37 F.4th 1049, 1051 (5th Cir. 2022)).

Under the concurrent-cause doctrine, "when covered and non-covered perils combine to create a loss, the insured is entitled to recover that portion of the damage caused solely by the covered peril." *Advanced Indicator & Manufacturing, Inc. v. Acadia Insurance Co.,* 50 F.4th 469, 477 (5th Cir. 2022) (quoting *Dallas Nat'l Ins. Co. v. Calitex Corp.*, 458 S.W.3d 210, 222 (Tex. App. 2015)); *see also JAW The Pointe, L.L.C. v. Lexington Ins. Co.,* 460 S.W.3d 597, 603 (Tex. 2015) (holding that an insurer is liable only for losses covered under the policy, and the insured bears the burden of establishing its losses are covered); *Certain Underwriters at Lloyd's of London v. Lowen Valley View, L.L.C.*, 892 F.3d 167, 170 (5th Cir. 2018) (citing *Lyons v. Millers Cas. Ins. Co. of Texas*, 866 S.W.2d 597, 601 (Tex. 1993). And "[b]ecause an insured can recover only for covered events, the burden of segregating the damage attributable solely to the covered event is a coverage issue for which the insured carries the burden of proof." *Advanced Indicator,* 50 F.4th at 477. The insured's failure to carry this burden is "fatal to recovery." *Id*. An insured may carry its burden by putting forth evidence demonstrating that the loss came solely from a covered cause *or* by putting forth evidence by which a jury may reasonably segregate covered and non-covered losses. *Id.* (emphasis added).

Federal courts applying Texas law have struggled with whether a plaintiff can satisfy their burden under the concurrent-causation doctrine with evidence that attributes all damage to a single covered cause. *See Frymire Home Servs., Inc. v. Ohio Sec. Ins. Co.*, 12 F.4th 467, 472 (5th Cir. 2021); *Overstreet v. Allstate Vehicle & Prop. Ins. Co.*, 34 F.4th 496, 499 (5th Cir. 2022). The Fifth Circuit provided some clarity on this issue in *Advanced Indicator*, 50 F.4th at 476–77.[8] In *Advanced Indicator*, the parties disputed whether Hurricane Harvey—a covered peril—or an excluded peril caused damage to the plaintiff's property. *Id.* at 472. The district court granted summary judgment to the insurance provider after it found that the plaintiff did not adequately segregate covered from non-covered damages. *Id.* at 476.

The Fifth Circuit reversed, holding that an insured may survive summary judgment "by putting forth evidence demonstrating that [its] loss came solely from a covered cause." *Id*. at 477. In other words, if "a jury could reasonably find that all of [an insured's] loss

[8] Neither party addresses *Advanced Indictor*. *See* Dkt. Nos. 40, 47, 49.

comes from a covered cause, the concurrent-causation doctrine does not bar recovery." *Id*. The Fifth Circuit pointed out that an expert for the plaintiff testified that the damage to the property "was 'absolutely' caused only by the hurricane." *Id.* at 476. The Court also noted that the record contained evidence indicating that the property "was in good shape" before the hurricane hit. *Id.* The Court held that the evidence attributing all damage to Hurricane Harvey meant that "the concurrent causation doctrine d[id] not bar recovery" because a jury "could reasonably find that all of [plaintiff's] loss c[ame] from a covered cause." *Id.* at 477.

Guided by the decision in *Advanced Indicator*, as well as this Court's decision in *Buttross v. Great Lakes Ins. SE*,[9] the undersigned finds that Wylie has satisfied its burden under the concurrent-causation doctrine. Like the plaintiffs in *Advanced Indicator* and *Buttross,* Wylie provides evidence—Hill's report and testimony—that the May 2023 storm was the sole cause of the damage to the Property.[10] At the summary judgment stage, when the Court must consider the evidence in a light that favors Wylie, Hill's report and testimony provide a "reasonable basis" for a jury to "find that all of [Wylie's] loss comes from a covered cause." *Advanced Indicator*, 50 F.4th at 477. Church Mutual's evidence to the contrary "serves only to create a factual dispute." *Id*. at 476.

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[9] No. 1:22-CV-086-H-BU, 2024 WL 50421, at *7 (N.D. Tex. Jan. 4, 2024) (Hendrix, J.).

[10] The *Advanced Indicator* Court also noted that the record contained evidence demonstrating that the property there was in good shape before Hurricane Harvey. *Advanced Indicator*, 50 F.4th at 476 Wylie provides similar evidence here. *See* Dkt. No. 47 at 15. Although Church Mutual complains this evidence is cherry-picked out of context, it is adequate, when combined with Hill's report and testimony, to create a genuine issue of fact regarding the pre-storm condition of the Property.

To be sure, Church Mutual contests whether the May 2023 storm caused all of the damage at issue and provides evidence supporting its position. But this dispute is, at base, quintessentially factual and not fit for resolution by summary judgment motion. *See, e.g.*, *Valleyview Church of Nazarene v. Church Mut. Ins. Co.*, No. 2:20-CV-222-Z-BR, 2022 WL 2718611, at *4 (N.D. Tex. July 13, 2022) (finding same).

Accordingly, the undersigned RECOMMENDS that the Court deny Church Mutual's Motion for Summary Judgment on the breach-of-contract claim.

2. The Court should deny Great Lakes's motion for summary judgment on the extracontractual claims.

Church Mutual argues that if Wylie cannot maintain its breach of contract claim, its claims for violations of the Texas Insurance Code, the DTPA, and common law bad faith must also fail. Dkt. No. 40 at 28. "The Texas Supreme Court has described breach of contract and bad faith claims as 'largely interwoven.'" *Advanced Indicator*, 50 F.4th at 477 (quoting *USAA Texas Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 489 (Tex. 2018)).

Having found that summary judgment is not warranted on the contract claim, the undersigned RECOMMENDS that the Court deny the Motion for Summary Judgment on the extracontractual claims. *Valleyview Church*, 2022 WL 2718611, at *5 ("Because the coverage question remains unsettled, the Court cannot resolve Plaintiff's extracontractual claims.") (internal quotation marks omitted).

V. CONCLUSIONS AND RECOMMENDATIONS

For the reasons explained above, the undersigned RECOMMENDS that the Court DENY Church Mutual's Motion to Exclude Expert Testimony of Bryan Hill and DENY Church Mutual's Motion for Summary Judgment.

VI. RIGHT TO OBJECT

A copy of these Findings, Conclusions, and Recommendations shall be served on all parties in the manner provided by law. Any party who objects to any part of these Findings, Conclusions, and Recommendations must file specific written objections within fourteen days of being served with a copy. *See* 28 U.S.C. § 636(b)(1) (2017); Fed. R. Civ. P. 72(b). To be specific, an objection must identify the specific finding or recommendation to which the objection is made, state the basis for the objection, and specify the place in the magistrate judge's Findings, Conclusions, and Recommendations where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

ORDERED this 6th day of February 2026.

JOHN R. PARKER
UNITED STATES MAGISTRATE JUDGE