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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ROGER NOVACK et al., Plaintiffs and Appellants, v. PACIFIC SPECIALTY INSURANCE COMPANY, Defendant and Respondent.	B278121 (Los Angeles County Super. Ct. No. BC502624)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory Keosian, Judge. Affirmed.

Moss Bollinger, Ari E. Moss; Selik & Associates and Evan Selik for Plaintiffs and Appellants.

Shoecraft ♦ Burton, Michelle L. Burton and Devin T. Shoecraft for Defendant and Respondent.

This appeal arises from a dispute over the scope and amount of benefits due pursuant to a homeowner's insurance policy. Roger and Mia Novack (the Novacks) appeal the trial court's grant of summary judgment, contending there remain triable issues of material fact that should be heard by a jury. We conclude Pacific Specialty Insurance Company (Pacific Specialty) has met its burden to demonstrate the Novacks failed to produce any evidence creating a triable issue of material fact, as there was a genuine dispute regarding the claims and Pacific Specialty conducted a thorough investigation of the Novacks' claims. We therefore affirm.

FACTUAL SUMMARY

I. The dwelling claim

The Novacks reported to their homeowner's insurance company, Pacific Specialty, water damage that occurred on December 22, 2010. Pacific Specialty issued an acknowledgement letter on January 3, 2011 informing the Novacks that they hired Dennis Ruby (Ruby), an independent appraiser with DRA Claims Services, to inspect the property and prepare a repair estimate. By the time they reported the loss, the Novacks had hired a Public Adjuster, David Lettiere (Lettiere), and a company called Servpro to perform emergency dry-out and remediation services to their home.

Ruby inspected the property on January 11, 2011 with Letierre and Mia Novack, and issued a report on January 13, 2011 estimating the replacement cost value (RCV) at $24,558.17 and actual cash value (ACV) at $23,385.10. The report included a $34,120.30 RCV estimate prepared by Aluriel Inc. (Aluriel), the Novacks' contractor. Ruby's report indicated that the Novacks were making claims for the removal of exterior stucco and a

complete replacement of the roof, which Ruby did not include in his estimate. Ruby recommended Pacific Specialty hire a roofing expert to further investigate the cause of the loss. Shortly thereafter Pacific Specialty authorized DRA to hire a roofing expert to prepare an opinion on the cause of the water leaks. Expert Designs Consulting (EDC) inspected the roof on January 28, 2011, and concluded that improper workmanship and bird-related damage had caused the water leaks. In his report, Ruby indicated that he "provided the opportunity for the insured's public adjuster to dispute our observations and meet at a future date with his roofing expert and ours should this turn out to be a disputed area of the claim." The Novacks presented no evidence that they availed themselves of this opportunity.

Under the terms of the policy, Pacific Specialty does not cover losses caused by faulty, inadequate, or defective workmanship. Pacific Specialty therefore declined to cover repairs to the roof, but agreed to cover damage to the house's interior.[1] On February 17, 2011, Pacific Specialty issued a

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[1] The Novacks disputed this fact; however the trial court accurately explained that the Novacks did not dispute that Pacific Specialty declined to cover repairs to the roof. Rather, they contended that the policy covers losses caused by wind. EDC concluded there was no wind, foreign object, or foot traffic damage to the roof, but the Novacks claimed the damage was caused in part by wind. To support this claim, the Novacks referenced a report prepared by Orchard Roofing & Waterproofing Consultants on January 14, 2011. However, Pacific Specialty objected to the admissibility of the report, arguing the evidence did not show Pacific Specialty ever received this report. The trial court found the report lacked foundation and sustained the objection. The Novacks do not challenge this

payment in the amount of $20,367.82 (less the Novacks' $2,500 deductible). On February 22, 2011, Letierre wrote Pacific Specialty to dispute the amount, advise them that Aluriel's estimate was accurate, and inform them that construction could not begin until the differences were adjusted. In a letter dated February 23, 2011, Pacific Specialty stated that its in-house contractor was reviewing Aluriel's estimate for any supplemental payment owed.

Don Barker (Barker), Pacific Specialty's in-house contractor, compared the Aluriel and DRA estimates, and found a number of discrepancies in dimensions and square footage within the house. Barker also found that Aluriel included estimates to replace carpeting, while DRA's estimate called for cleaning; Barker also noted that Aluriel's estimate called for replacement of certain items in a bedroom that DRA did not find to be damaged.[2] On March 11, 2011, Letierre submitted revised estimates by Aluriel to repair the interior and exterior of the home. The estimate to repair the interior of the home was

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ruling on appeal. They have thus waived the issue and we consider the report to have been property excluded. (*Lopez v. Baca* (2002) 98 Cal.App.4th 1008, 1014–1015.) Furthermore, we may not consider evidence to which objections have been made and sustained by the trial court. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.)

[2] The Novacks disputed this fact by referring to a declaration by their expert, Bruce Warren, which, as discussed further below, did not address the substance of Barker's findings. Instead, Warren offered a number of opinions and conclusory statements attacking Barker's credibility. At no point in his statement did Warren suggest that Barker did or did not make these findings.

$32,186.83 and the estimate to repair the exterior was $60,416.77. Letierre advised Pacific Specialty that repairs to the roof had commenced but interior work could not begin until Pacific Specialty approved and paid for the exterior repairs. However, repairs to the roof did not actually begin until July 2012.[3]

Barker reviewed Aluriel's revised estimates and an invoice Servpro had submitted on February 2, 2011 for emergency services work in the amount of $4,443.13. Barker approved payment for the Servpro invoice in the amount of $4,335.92, and approved a $4,901.40 supplemental payment for carpet replacement and limited stucco repairs.[4] Barker concluded that most of the $60,000 estimate was for repairs attributable to improper maintenance or workmanship.[5] Pacific Specialty declined to issue a supplemental payment for these repairs as they are excluded under the policy.[6] Pacific Specialty processed

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[3] The Novacks attempted to counter this factual contention by stating that, because Pacific Specialty "failed to adjust and investigate" the claim in the months between April 2011 and October 2012, they could not begin the repairs. They do not, however, dispute that roof repairs did not actually begin until July 2012.

[4] The Novacks disputed this contention by referring to the Warren declaration, which contains no language suggesting Barker did or did not approve these payments.

[5] Again, the Novacks disputed this fact by referring to the Warren declaration, which in no way suggests Barker did not reach this conclusion.

[6] The Novacks disputed this fact on the same basis in footnote one, above. They did not dispute that Pacific Specialty

the $4,335.92 and $4,901.40 payments on March 21, 2011, and sent Lettiere a fax notifying him that payment was underway. The fax included a supplemental estimate for the repairs and an advisement that if he wished to contest the amount of the estimate, Pacific Specialty would refer the loss to the appraisal process.

On March 28, 2011, Lettiere wrote Pacific Specialty stating the Novacks cannot begin repairs on the interior of the home "until such time as the ca[u]ses of the water intrusion, the roof and rear exterior wall are complete." Pacific Specialty interpreted this statement to mean that Lettiere was, for the first time, indicating that stucco had been one of the causes of the loss. On April 5, 2011, Pacific Specialty sent Lettiere a letter in response indicating that their roofer's report showed no stucco damage, and that they never agreed that anything other than roof failure was responsible for the loss.

Lettiere's letter also stated again that work to the roof had begun, and that the Novacks would soon be appointing an appraiser. Pacific Specialty's April 5, 2011 letter acknowledged that the Novacks "wanted to utilize the appraisal process as afforded in the policy" and reported that they had not yet heard from the Novacks as to who would represent them in the appraisal process. On April 7, 2011, Leon Lamprecht of Leon Lamprecht Insurance Adjusters & Appraisers sent Pacific Specialty a letter informing them the Novacks had appointed him as their appraiser.

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declined to cover these repairs. Rather, the Novacks contended that the policy covers losses caused by wind.

II. Personal property claim

Pacific Specialty sent letters requesting advisement as to whether the Novacks had sustained any personal property losses on January 3, February 23, July 22, August 16, September 9, and October 5 of 2011.[7] On October 31, 2011, Pacific Specialty sent a letter advising Lettiere that they were closing the personal property portion of the claim since the Novacks had not responded to their prior requests. The letter invited the Novacks to send them any information regarding personal property losses by December 22, 2011 if they wished to reopen the claim. The Novacks never submitted any claims for property losses to Pacific Specialty. Before invoking the appraisal process, the Novacks had no dispute with Pacific Specialty regarding personal property damage.

III. Claim for additional living expenses[8]

The Novacks' policy with Pacific Specialty provides benefits for living expenses incurred during investigation and repair due

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[7] The Novacks disputed the absence of personal property loss claims by asserting that the personal property claim "was part of the appraisal process and a determination was made through the appraisal process." They did not refute, however, that they did not submit any personal property claims directly to Pacific Specialty in response to the above-referenced letters.

[8] The Novacks attempted to dispute a number of these facts by arguing that Pacific Specialty had rejected two housing requests, offered unsuitable housing options, advised the Novacks that they would not offer ALE benefits to cover time beyond what was required to complete the repairs, and "took 18 months of delay and underpayment . . . by Pacific Specialty to find out it was wrong." The Novacks did not, however, provide any evidence directly refuting the facts stated herein.

to a covered loss. The policy provides that "[i]f a loss . . . makes that part of the residence premises where you reside not fit to live in, we cover, at your choice," either Additional Living Expenses (ALE), defined as "any necessary increase in living expenses incurred by you so that you can maintain your normal standard of living," or Fair Rental Value (FRV) "of that part of the residence premises where you reside less any expenses that do not continue while the premises is not fit to live in."

On January 12, 2011, Ruby advised Pacific Specialty that it would take approximately two months to complete the repairs to the Novacks' home. Pacific Specialty initially approved 10 days of housing in a hotel while Pacific Specialty completed its investigation. The company that locates housing for those insured by Pacific Specialty—Independent Housing Solutions (IHS)—informed Pacific Specialty on January 21, 2011 that the Novacks were requesting a $6,000 per night hotel. Pacific Specialty declined the request and asked IHS to locate a more reasonably priced hotel. On or about January 25, 2011, IHS informed Pacific Specialty that they had located a house two miles from the Novacks' home at a rate of $1,275 per night that would accommodate the Novacks, their two children, their nanny, and their two dogs. The following day, Lettiere informed Pacific Specialty that the Novacks were choosing to stay in their home rather than move to temporary housing.

On February 4, 2011, after reviewing the roofing report, Pacific Specialty offered ALE benefits to the Novacks for a period of two months—the time estimated to complete the repairs. The Novacks did not like the properties IHS offered to them, so Mia Novack selected a rental home on her own. Pacific Specialty

approved her request and, on March 4, 2011, the Novacks moved into a rental home in West Hollywood selected by Mia Novack.

On March 28, 2011, Lettiere asked Pacific Specialty to approve additional time for temporary housing. He again stated that the work on the roof had begun but no repairs to the exterior wall had been paid, and that "there is some $60,000 difference" between Pacific Specialty and the Novacks' estimates for repair. On March 30, 2011, Pacific Specialty informed Lettiere that Pacific Specialty would not approve any additional housing as their policy only covers housing costs for the amount of time it would take to repair the covered portion of the loss. Pacific Specialty paid $36,346.00 in ALE benefits to IHS on behalf of the Novacks on February 23, 2011 to cover the West Hollywood rental through May 5, 2011.[9]

Mia Novack testified via deposition that she and her family were happy with the rental they finally found, the landlord was paid directly, and that they did not incur any out-of-pocket expenses for housing.

IV. Second dwelling claim

On March 21, 2011, Lettiere wrote Pacific Specialty to report additional damage to the property following a wind and rain storm the preceding weekend. Pacific Specialty advised Lettiere this would be considered a second loss. Shortly thereafter, Mia Novack contacted Pacific Specialty to open a second claim reporting water damage to the master bedroom,

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[9] The Novacks disputed this fact by stating "[t]here is no evidence submitted by Pacific Specialty that shows this amount was paid on May 5, 2011." Pacific Specialty did not say, however, that they submitted the payment *on* May 5, 2011; rather, they stated they paid for benefits *through* May 5, 2011.

bathroom, living room, and dining room. Pacific Specialty assigned Crawford and Company to inspect the property. Crawford completed the inspection on March 20, 2011 and advised Pacific Specialty that the loss was caused by wind-driven rain and worn seals around the windows. They estimated repair at $3,165.95 in RCV and $3,106.41 in ACV. Crawford also advised Pacific Specialty that the Novacks had already completed emergency services work and that they would need the EMS invoices to discern the scope of work and whether the damage was related to the first loss.

On May 12, July 27, August 19, September 14, and October 10 of 2011, Pacific Specialty wrote directly to Roger Novack asking him to submit documentation for EMS services for the second loss. On November 3, 2011, Pacific Specialty closed the second claim as they never received the necessary documentation from the Novacks. Pacific Specialty invited the Novacks to reopen the claim by submitting the documentation for EMS services. The Novacks never responded to these requests.[10]

V. The appraisal

Before the Novacks requested appraisal, they understood they would be responsible for their own costs and that the process could take over one year. When asked during her deposition why she did not respond to Pacific Specialty's letters requesting documentation for personal property losses or for the second

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[10] The Novacks disputed these facts by stating that "[t]he dwelling portion of the claim was part of the appraisal process and a determination was made through the appraisal process." However, they provide no evidence to refute that Pacific Specialty made these requests or that the Novacks failed to provide them with the necessary documentation to support the second claim.

claim, Mia Novack testified that Lettiere advised her and her husband everything would be handled through the appraisal process, not to communicate directly with Pacific Specialty, and to only communicate with him.

During the appraisal process, the Novacks did not rely on the Aluriel estimate for dwelling repairs; instead they submitted a new estimate totaling $166,388.40. The Novacks also submitted, for the first time, claims for damage to tile and musical instruments; they also submitted for the first time an estimate for their personal property losses.[11]

On October 29, 2012, the appraisers issued the following award: for the dwelling claim, $4,335.92 for emergency services, $77,033.27 RCV and $74,203.68 in ACV for general repairs, $6,860.01 for mold repairs, and $8,368 to pack and store personal property; for personal property, a total loss of $16,078.06 in RCV and $13,220.77 in ACV; and for ALE, three months' rental valued at $57,000. The award specifically stated it was "made without consideration of any coverage issues, policy limits, deductible amount, prior payment amounts by Pacific Specialty . . . , non-covered items or other provision of the above described policy,

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[11] The Novacks attempted to dispute these factual contentions by arguing that Pacific Specialty had failed to "critically or intelligently" evaluate the discrepancy between the estimates as part of a deliberate plan to cheat the insureds; and that Ruby was not an independent appraiser and deliberately found the damage was not caused by wind in order to allow Pacific Specialty to deny coverage. They do not, however, provide or cite any evidence contradicting or refuting the above-referenced factual contentions by Pacific Specialty.

which might affect the existence and/or amount of the Insurer's liability thereunder."

On November 12, 2012, Pacific Specialty denied coverage for the mold award, as it is specifically excluded under the policy. On November 26, 2012, Pacific Specialty paid the Novacks $13,220.77 ACV for personal property, $8,368 to cover the cost to store and pack personal property, $46,434.46 ACV for the general repairs portion of the dwelling award, and $20,654 for the additional month of ALE. Mia Novack testified that she understood Pacific Specialty was not obligated to pay for portions of the award not covered by the policy, and that Pacific Specialty could deduct from the award previous payments it had issued.[12]

PROCEDURAL SUMMARY

On March 3, 2013, the Novacks filed a complaint against Pacific Specialty for breach of contract and breach of the implied covenant of good faith and fair dealing (bad faith). The Novacks argued that Pacific Specialty had breached the terms of their insurance policy by failing to pay benefits and "delaying ultimate payment" of their claim. In support of their claim for bad faith, the Novacks alleged Pacific Specialty unreasonably withheld benefits, delayed processing their claims, hired personnel known to consistently undervalue claims, and failed to thoroughly investigate their claims.

On February 19, 2016, Pacific Specialty filed a motion for summary judgment (MSJ), alleging they had paid the full amount of the appraisal award, less uncovered damages and

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[12] The Novacks attempted to dispute these facts by making the same arguments noted above in footnote 11. Again, they did not provide or cite any evidence contradicting or refuting the specific factual contentions.

prior payments; paid all sums due within a reasonable time; and did not engage in bad faith because there was a genuine dispute about the amounts due under the policy. In support of their motion, Pacific Specialty filed a list of 111 undisputed material facts (UMF's) and attached multiple exhibits.

The Novacks opposed the MSJ on May 12, 2016. They responded to the UMF's, attached a number of exhibits, and attached a declaration by Bruce Warren, an attorney with experience in insurance claims handling. Warren's declaration purported to establish that Pacific Specialty's handling of the Novacks' claim fell so far below industry standards as to be unreasonable and malicious. The Novacks relied in large part on Warren's declaration to (ineffectively) dispute some of the UMF's submitted by Pacific Specialty. The declaration, however, is utterly devoid of any relevant or admissible statements challenging the factual allegations in the UMF's. Instead, Warren begins the declaration with a lengthy description of his qualifications, followed by an explanation of how he was persuaded to serve as an expert witness in this case after determining that PSIC's MSJ was of poor quality and did not meet his standards. Warren then enumerates a set of " 'red flags,' " highlighting what he perceives to be the deficits in Pacific Specialty's handling of the Novacks' claim. None of these red flags are supported by actual evidence; they consist instead of a series of conclusory statements and unsupported conclusions of law regarding the MSJ and the genuine dispute doctrine. Warren does not adduce evidence of any specific actions taken by Pacific Specialty that were contrary to the facts known at the time Pacific Specialty handled the claim. He simply asserts the legal conclusion that Pacific Specialty breached the covenant of

good faith without setting forth any factual foundation for his conclusion.

Pacific Specialty filed a reply to the Novacks' opposition to the MSJ on May 20, 2016, arguing that Warren's declaration failed to raise any issues of triable fact as it contained no evidentiary matters but instead consisted of pure legal argument.

The trial court granted the MSJ on May 27, 2016, concluding: (1) there was no breach, as Pacific Specialty met its burden to show that it had paid the Novacks everything owed under the policy; and (2) there was no bad faith, as Pacific Specialty demonstrated there was a genuine dispute about the amount of damages owed under the policy. The trial court observed that the Warren declaration "is not the type of 'substantially responsive evidence' that creates a triable issue of fact" and found that the Novacks "failed to produce any responsive evidence creating a triable issue of material fact" with respect to whether there was a genuine dispute and whether Pacific Specialty reasonably investigated the claimed losses.

STANDARD OF REVIEW

We review a trial court's granting summary judgment de novo, "considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained." (*Guz v. Bechtel National, Inc.*, *supra*, 24 Cal.4th at p. 363.) We "liberally construe the evidence in support of the party opposing summary judgment and resolv[e] doubts concerning the evidence in favor of that party." (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460.)

Summary judgment is warranted "if all the papers submitted show that there is no triable issue as to any material fact" such that "the moving party is entitled to judgment as a

matter of law." (Code Civ. Proc., § 437c, subd. (c).) "A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1).)

The moving party "bears the burden of showing the court that the plaintiff 'has not established, and cannot reasonably expect to establish, a prima facie case.' " (*Miller v. Department of Corrections, supra,* 36 Cal.4th at p. 460.) The burden then shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff " ' "may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action." ' " (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 274.)

DISCUSSION

I. Breach of contract

The Novacks alleged that Pacific Specialty breached the terms of the policy by failing to pay benefits under the policy and delaying ultimate payment of their claim. Both allegations are without merit.

The record reflects that Pacific Specialty paid all amounts owed to the Novacks pursuant to the appraisal award. The policy unequivocally excludes coverage for mold damage; thus, Pacific Specialty committed no breach when it did not pay this portion of the appraisal award.

The Novacks argued in their initial complaint that Pacific Specialty breached the contract by subtracting the $36,346 already paid to IHS from the ALE portion of the appraisal award. Their rationale is somewhat nonsensical, but it appears they

believe they are owed this payment because Pacific Specialty's valuation of the damage to the house was "insufficient to perform the necessary repairs." The dispute between the parties as to the cost to repair the damage is entirely irrelevant to the fact that the Novacks rented a house *they chose and were happy with*, and that Pacific Specialty subsequently paid for the rental. Such offset is unarguably appropriate; to conclude otherwise would result in double payment. Pacific Specialty therefore committed no breach when it subtracted the $36,346 from the ALE portion of the appraisal award.

As discussed below, we conclude that Pacific Specialty did not improperly or unreasonably delay payment of insurance benefits. As such, the Novacks' argument that Pacific Specialty breached the contract by delaying payment also fails.

II. Breach of the implied covenant of good faith and fair dealing

In every contract, including insurance policies, the law implies a covenant of good faith and fair dealing. (*Wilson v. 21st Century Insurance Company* (2007) 42 Cal.4th 713, 720 (*Wilson*).) To fulfill this obligation, an insurer "must give at least as much consideration to the interests of the insured as it gives to its own interests." (*Frommoethelydo v. Fire Ins. Exchange* (1986) 42 Cal.3d 208, 214.) " 'A trier of fact may find that an insurer acted unreasonably if the insurer ignores evidence available to it which supports [an insured's] claim.' " (*Wilson*, at p. 721.) And, an insurer acts unreasonably and in bad faith when it denies payments to its insured "without fully investigating the grounds for its denial." (*Frommoethelydo*, at p. 215.) An insurer acts in bad faith when it delays paying benefits "only if the insured shows the . . . delay was unreasonable." (*Wilson*, at p. 723.)

When there is a "genuine dispute" over coverage liability or the amount of coverage under a claim, an insurer denying or delaying payment of benefits is not liable in bad faith. (*Wilson, supra,* 42 Cal.4th at p. 723.) A genuine dispute exists "where the insurer's position is maintained in good faith and on reasonable grounds." (*Ibid.*)

When there is a dispute over coverage, and each side relies "on the differing opinions of their respective experts . . . 'even a substantial disparity in estimates for the scope and cost of repairs does not, by itself, suggest the insurer acted in bad faith.' " (*Chateau Chamberay Homeowners Assn. v. Associated Internat. Ins.* Company (2001) 90 Cal.App.4th 335, 348.) However, when an insured alleges its insurer relied on a biased investigation to deny coverage, and the insurer relied on the advice and opinions of experts, it is not automatically insulated from a bad faith claim. (*Ibid.*)

A trial court properly grants a motion for summary judgment " 'when it is undisputed or indisputable that the basis for the insurer's denial of benefits was reasonable.' " (*Wilson, supra,* 42 Cal.4th at p. 724.) "Thus, an insurer is entitled to summary judgment based on a genuine dispute over coverage . . . only where the . . . record demonstrates the absence of triable issues [citation] as to whether the disputed position upon which the insurer denied the claim was reached reasonably and in good faith." (*Ibid.*)

To support their cause of action for breach of the implied covenant of good faith and fair dealing, the Novacks contend that Pacific Specialty acted in bad faith by failing to conduct a thorough investigation, unreasonably relying on its experts, and

unreasonably delaying the settlement of their claim. For the reasons below, we disagree.

A. THE INVESTIGATION

The Novacks reported water damage on January 3, 2011. Pacific Specialty's appraiser, Ruby, inspected the property on January 11, 2011, and issued his report on January 13th. Ruby included the estimate provided by Aluriel—the Novacks' appraiser—which was over $10,000 more than Ruby's estimate. Ruby noted that the Aluriel estimate included a roof replacement; he therefore recommended Pacific Specialty hire a roofer to further investigate the loss. EDC inspected the roof on January 28, 2011 and concluded that improper workmanship was the cause of the leaks. It is undisputed that the Novacks' policy did not cover losses caused by defective workmanship; Pacific Specialty thus declined to cover repairs to the roof.

To support their cause of action for breach of the implied covenant of good faith and fair dealing, the Novacks contend that Pacific Specialty acted in bad faith by failing to consider their roofer's estimate, which found the damage was caused in part by wind. However, as indicated above, there is no evidence the Novacks ever submitted their roofer's estimate directly to Pacific Specialty. We therefore see no reason why it was unreasonable for Pacific Specialty to rely on EDC's findings; nor can we conclude Pacific Specialty did not properly investigate the roof damage in relying on its expert when the Novacks did not attempt to refute EDC's findings by giving their roofer's estimate (or some other evidence that the damage had resulted from a covered cause, not faulty workmanship) directly to Pacific Specialty before entering the appraisal process.

The Novacks also claim that a question of facts exists as to whether Pacific Specialty denied coverage for mold remediation in good faith. Not so. The policy expressly excludes coverage for mold damage, and the Novacks have not effectively disputed this fact with any evidence to the contrary. We therefore cannot conclude that Pacific Specialty's denial of this portion of the appraisal award was unreasonable.

B. DENNIS RUBY

The Novacks also allege Pacific Specialty breached the implied covenant of good faith and fair dealing by conducting a "biased" investigation, asserting Ruby was not truly an "independent" expert because 99 percent of his work comes from Pacific Specialty. Therefore, they argue, he had an incentive to "undervalue" the Novacks' claim. Since Ruby knew that Pacific Specialty policy covered wind damage, they argue, a jury could have found that Ruby deliberately found no wind damage, thereby allowing Pacific Specialty to deny coverage. The Novacks offer no facts or evidentiary support for these contentions. And, in fact, the evidence directly contradicts the Novacks' assertion that Ruby was somehow biased. First of all, Ruby *recommended* that Pacific Specialty hire a roofer despite the fact that he found no wind damage, essentially inviting another expert to prove him wrong. Ruby also invited the Novacks and Lettiere to meet at a future time with their roofing expert should they dispute his findings. We therefore cannot conclude that Ruby or Pacific Specialty conducted a biased investigation.

C. DON BARKER

As to their claim that Pacific Specialty breached the implied covenant of good faith and fair dealing, the Novacks argue that a triable issue of fact exists as to whether Pacific

Specialty was reasonable in relying on Barker's recommendations. They rely on Warren's declaration to suggest Barker was not "independent" because he was a Pacific Specialty employee, and that he was not an "expert in claims handling." The Novacks proffered nothing other than speculation and innuendo to support their allegation that Barker did not act independently in reviewing the EDC and Aluriel estimates. As to Barker's expertise in claims handling, the record shows that he is a licensed general building contractor with extensive training and experience with software that is "commonly used" to estimate repairs for property insurance claims. The Novacks do not offer any explanation for why this experience does not qualify him as an expert. Warren also asserted that he was "concerned" about whether Pacific Specialty acted reasonably in relying on Barker's analysis because "[n]otably absent" in Barker's declaration was a "statement that he tried to make the right decision" and "anything that told [Warren that Barker] had put any critical or intelligent thought into what he was doing."

"[A]n expert's opinion based on assumptions of fact without evidentiary support [citation], or on speculative or conjectural factors [citation], has no evidentiary value." (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117.) And, "when an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an 'expert opinion is worth no more than the reasons upon which it rests.' " (*Ibid.*)

Warren's "concerns" here are purely speculative and " 'devoid of any basis, explanation, or reasoning.' " (*Nardizzi v. Harbor Chrysler Plymouth Sales, Inc.* (2006) 136 Cal.App.4th

1409, 1415.) Warren does not present any factual predicates or other evidence that Barker did not try to make the right decision; nor does he explain why the lack of such a statement undermines the veracity of the declaration. And, contrary to Warren's assertion that Barker did not critically or intelligently evaluate the claims, the evidence demonstrates the contrary. In his declaration, Barker described the work he conducted on the claims and stated the reasons why he believed the Aluriel estimate was inaccurate.

We therefore cannot conclude that Pacific Specialty unreasonably relied on Barker's analysis of the competing claims. Instead, we conclude that the difference between the Novacks' and Pacific Specialty's estimates for dwelling repairs was a legitimate dispute that was properly resolved through the appraisal process.

D. PACIFIC SPECIALTY DID NOT UNREASONABLY DELAY HANDLING THE NOVACKS' CLAIM

The Novacks also contend that Pacific Specialty breached the implied covenant of good faith and fair dealing by unreasonably and in bad faith delaying payment by failing to adjust the claim while it was in appraisal. They add that this delay entitles them to additional ALE.

There is no evidence that the Novacks asked Pacific Specialty to adjust their claim at any time during the pendency of the appraisal. To the contrary, they followed Lettiere's advice and deliberately *stopped* communicating with Pacific Specialty. Furthermore, Pacific Specialty repeatedly requested from the Novacks information and documentation necessary to investigate and process the personal property claim and the second dwelling claim. The Novacks did not respond to any of these requests. We

cannot therefore find that Pacific Specialty acted in bad faith; to the contrary, it acted in good faith by reaching out to the Novacks over the course of many months in an attempt to resolve the personal property and second dwelling claims. With respect to the claims that were under appraisal, the Novacks have failed to show that they made any overtures to request settlement of the claim from Pacific Specialty during the appraisal process. They do not cite, nor are we aware of, any legal authority suggesting an insurer must, on its own initiative, attempt to resolve a disputed claim during the pendency of the appraisal process.

With respect to the contention that Pacific Specialty owed the Novacks' additional ALE for the time their claims were in appraisal, Mia Novack's deposition testimony unequivocally establishes that the Novacks did not incur any out-of pocket expenses for housing. The Novacks have therefore failed to show that they were owed any additional ALE.

E. CONCLUSION

We find no breach of contract or the implied covenant of good faith and fair dealing. Instead, we conclude that there was an authentic dispute as to what was covered under the policy and the amount necessary to repair the covered losses. Each party, properly relying on its competent experts, disputed the amount proffered by the opposing party as to how much it would cost to repair the covered losses. This dispute was properly resolved in keeping with the terms of the policy, which expressly provides that either party may demand an appraisal of a loss when Pacific Specialty and the insured "fail to agree on the amount of loss."

Pacific Specialty conducted a full investigation of the Novacks' claims, considered the competing estimates, issued all payments due pursuant to the appraisal award, did not

unreasonably delay processing the Novacks' claims, and did not unreasonably rely on its experts in determining the scope and amount of repairs. Based on the record, we conclude there exists no issue of triable fact demonstrating Pacific Specialty acted unreasonably or in bad faith.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

BENDIX, J.