

Court of Common Pleas of Philadelphia County
 Trial Division - Civil
TRIAL WORK SHEET

DOCKETED
 COMPLEX LIT CENTER

APR 06 2021

Judge's Name: STELLA TSAI	Judge's I.D.: J553	Signature: 	V. CARABALLO
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Caption: DAVIS VS ALLSTATE PROPERTY AND CASUALTY INSURANCE	Case Type: CONTRACTS OTHER	Program: MAJOR NON JURY STANDARD
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Court Term and Number: #1803-02844	If Consolidated, Court Term and Number:
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Trial Date: 16-FEB-2021	<input type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-Jury	Total Amount: \$0.00	Number of Days: 1	Disposition Date: 31-MAR-2021	Date Sheet Prepared: 31-MAR-2021
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Full Description of Disposition (to be entered Verbatim on the Docket)

Judgment entered in favor of Defendant Allstate Property and Casualty Insurance Company.

- | | | |
|--|--|---|
| <input type="checkbox"/> Default Judgment/Court Ordered
<input type="checkbox"/> Directed Verdict
<input type="checkbox"/> Discontinuance Ordered
<input type="checkbox"/> Transferred to binding arbitration
<input checked="" type="checkbox"/> Finding for Defendant (Non-Jury)
<input type="checkbox"/> Finding for Plaintiff (Non-Jury)
<input type="checkbox"/> Damages Assessed
<input type="checkbox"/> Judgment entered by agreement
<input type="checkbox"/> Judgment entered
<input type="checkbox"/> Judgment satisfied | <input type="checkbox"/> Jury Verdict for Plaintiff
<input type="checkbox"/> Jury Verdict for Defendant
<input type="checkbox"/> Mistrial
<input type="checkbox"/> Hung Jury
<input type="checkbox"/> Non-Pros entered
<input type="checkbox"/> Non-Suit entered
<input type="checkbox"/> Settled prior to assignment for trial (Team Leaders, only)
<input type="checkbox"/> Settled after assignment for trial
<div style="margin-left: 20px;"> <input type="checkbox"/> prior to jury selection
 <input type="checkbox"/> after jury sworn </div> | <input type="checkbox"/> Other (explain)

Davis Vs Allstate Prope-WSFFD
18030284400098 |
|--|--|---|

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT
TRIAL DIVISION – CIVIL SECTION**

**SHADANA DAVIS and
NATIONSTAR MORTGAGE LLC
ITS SUCCESSORS and/or ASSIGNS,
Plaintiffs,**

v.

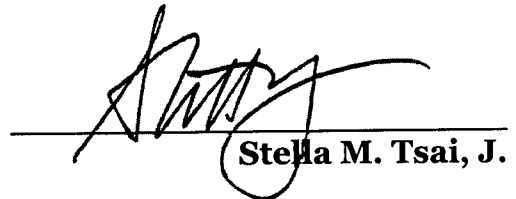
**ALLSTATE PROPERTY AND CASUALTY
INSURANCE COMPANY,
Defendant.**

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: **No. 180302844**
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ORDER

AND NOW, this 31st day of March 2021, for the reasons stated in the Findings of Fact and Conclusions of Law filed on this same date, it is hereby **ORDERED** and **DECREED** that judgment is entered in favor of Defendant Allstate Property and Casualty Insurance Company and against Plaintiffs Shadana Davis and Nationstar Mortgage, LLC its Successors and/or Assigns.

BY THE COURT:



Stella M. Tsai, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT
TRIAL DIVISION – CIVIL SECTION**

SHADANA DAVIS and	:	
NATIONSTAR MORTGAGE LLC	:	
ITS SUCCESSORS and/or ASSIGNS,	:	
Plaintiffs,	:	
	:	No. 180302844
v.	:	
	:	
ALLSTATE PROPERTY AND CASUALTY	:	
INSURANCE COMPANY,	:	
Defendant.	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Tsai, J.

I. INTRODUCTION

On February 16, 2021, this Court conducted a bench trial via advanced communications technology on Plaintiff Shadana Davis’s claims of breach of contract and bad faith under 42 Pa.C.S. §8371 against Allstate Property and Casualty Insurance Company. Plaintiff Shadana Davis was present and represented by Anthony DiUlio, Esq. of Wheeler, DiUlio & Barnabei, PC. Plaintiff Nationstar Mortgage LLC was represented by Autumn Pividori, Esq.¹ Defendant was represented by Michael Maguire, Esq. of Curtin & Heefner, LLP. Now, pursuant to Rule 1038 of the Pa. R. Civ. P., having reviewed the parties’ post-trial submissions and the record, we issue our findings of fact and conclusions of law as to the disposition of Plaintiff’s claims.

¹ Nationstar was named as Plaintiff in its capacity as the mortgagor of the Property, but did not take an active role in the proceedings.

II. FINDINGS OF FACT

A. Origins of Plaintiff's 2017 Coverage Claim against Allstate.

Plaintiff has owned the property located at 1044 E. Sedgwick Avenue, Philadelphia, Pennsylvania 19050 (the "Property") since 2004. Defendant Allstate Property and Casualty Insurance Company has insured the Property since 2011.

The Property is a single-story twin home which has a flat roof with modified "bitumen" roofing. There is a pent roof on the front side and right side of the house toward the street. The pent roof has one layer of 15-year, 3-tab asphalt shingle roofing, which was at least 30 years old in 2017. The flat roofing was 15 to 20 years old.

In 2011, Plaintiff made a property damage claim to Allstate. This claim was denied due to the condition of the roof. Pictures taken in 2011 by Allstate representative reveal interior water damage in Defendant's rear bedroom.

The Plaintiff made patches to the roof and had silver coating applied to the flat roof, but she did not undertake the proper maintenance or upkeep to prevent further deterioration of the roof.

Plaintiff sought to introduce a weatherization report from the City of Philadelphia to establish the fitness of the roof. We allowed Plaintiff to testify about this document, but we do not find that it substantiates Plaintiff's position that she attempted to remedy the deteriorating conditions on the roof which led interior water damage to the Property in 2011. As Plaintiff acknowledged at trial and in her prior statement to Allstate, Plaintiff had never replaced any roof shingles.

This coverage dispute arises from a motor vehicle incident on May 2, 2017 at the intersection of Lowber Street and Sedgwick Avenue (the "Truck Incident"). A truck driving northwest on Lowber Street got tangled in overhead wires as it made a left onto

Sedgwick Avenue and pulled off the electrical lines and communications lines attached to the rear of the Plaintiff's property at 1044 E. Sedgwick Street. The telephone pole fell away from the house toward the street. The Plaintiff was not home when the Truck Incident happened.

Three days later, on May 5, 2017, the Property sustained interior water damage after a substantial rainfall on the same day. Plaintiff hired a public adjuster, People's Property Adjuster LLC, which came to the Property and hired I & L Construction LLC and CPR Restoration to repair the roof. I & L installed new flashing to the roof wall, fixed torn roof with rubber cement, used rubber cement along the rear of the roof to stop leakage, installed tarps to the front and back part of roof, and removed all water from the surface of the flat roof. Plaintiff testified that, after these repairs were made, no further water entered the Property. Plaintiff estimates that she has \$57,455.47 in unpaid damages resulting from this loss.

People's Property Adjuster then reported the Truck Incident on Plaintiff's behalf to Defendant Allstate seeking coverage under Allstate Standard Homeowners Insurance Policy No. 928 027 739 (the "Policy"), alleging that interior water damage loss and exterior damage was caused by a "vehicle" on May 2, 2017. This was the first notice Allstate received from the Plaintiff about the Truck Incident. Allstate assigned a claim number to the Truck Incident claim ("Claim") and initiated an investigation of the Claim.

B. Relevant "Named Peril" Policy Provisions

The Policy is a standard homeowners policy, also known as a "named peril" policy, and affords coverages for specific "sudden and accidental" physical losses that

are expressly named in the Policy. **See** Exhibit P-9, p. 8; Exhibit D-1, p. 8. The Policy provides:

Losses We Cover Under Coverages A, B, and C:

We will cover **sudden and accidental physical loss** to the property described in Coverage A - Dwelling Protection, Coverage B - Other Structures Protection, and Coverage C - Personal Property Protection except as limited or excluded in this policy, caused by:

...

6. Vehicles.

Id. (emphasis added).²

Plaintiff claimed that the May 5, 2017 interior water damage and exterior damage to the electrical system were caused by the Truck Incident.

C. Allstate's Investigation of Plaintiff's Claim

Allstate representative Alan Duddy inspected the Property on May 10, 2017 with Darryl Jones of the People's Property Adjuster. Mr. Jones advised Mr. Duddy that it was raining at the time of the Truck Incident, which turned out not to be true.

Allstate retained a roofing expert, Doug Weiss of Rainmasters, Inc., to determine whether the May 5, 2017 interior water damage was caused by the May 2, 2017 Truck Incident. Doug Weiss inspected the Property on May 16, 2017 and found no evidence that the May 2, 2017 incident affected the roofing or caused a problem that allowed water to leak into the Property. **See** Exhibit D-6.

² Plaintiff did not make a claim for coverage under the Windstorm or Hail provision of the Policy which states as follows: "We do not cover: (a) loss to the interior of a building structure, or covered property inside, caused by rain, snow, sleet, sand or dust unless the wind or hail first damages the roof or walls and the wind forces rain, snow, sleet, sand or dust through the damaged roof or wall." Exhibit P-9, p. 8; Exhibit D-1, p. 8.

Doug Weiss compared the photographs from the 2011 claim with photographs taken in 2017 and concluded that the same problems still existed because no repairs or replacements had been done. The shingled roof already had deteriorated, warped, and had broken shingles and the flat roof had discoloration, deterioration, ponding and pooling of water and long-accumulating debris.

While the Plaintiff had made minor repairs to the roof since 2011, the already poor condition of the roof got worse over time without proper maintenance. The evidence shows that the extensive interior water damage is the product of long-term exposure to moisture and not the product of a few shingles ensnared in electric and communication lines on the pent roofs toward the back and front of the Property.

On May 31, 2017, Allstate obtained a recorded statement from the Plaintiff on May 31, 2017 and, on June 8, 2017, requested that Plaintiff provide to Doug Weiss the documentation regarding electrical work and tree removal and photographs taken by Darryl Jones of People's Property Adjuster LLC to substantiate the Claim.

On June 16, 2017 Plaintiff submitted a Proof of Claim at Allstate's request. Ten days later, Alan Duddy forwarded the electrical work and tree removal documentation and Darryl Jones's photographs to Doug Weiss. On June 23, 2017, Doug Weiss advised Allstate that he had reviewed the photographs and invoices, but they did not alter his opinion that the interior water damage resulted from long term wear and tear. He found nothing that would indicate that the fallen tree from the May 2, 2017 Truck Incident caused any of the damage to the roof associated with water leakage.

On June 29, 2017 Kelly Electric advised Allstate that the electrical work performed by Plaintiff's own electrician had not been performed correctly. On July 10,

2017 and August 8, 2017 Allstate requested additional documentation from Darryl Jones of People's Property Adjuster, LLC.

On September 27, 2017 Allstate issued payment of \$2724.60 for the exterior damage caused by the May 2, 2017 Truck Incident. On the same date, Allstate's representative, Alan Duddy, sent correspondence to Darryl Jones of People's Property Adjuster LLC stating that the "extent of the damage related to the **vehicle loss** on May 2, 2017 was limited to the exterior of the home. The interior water damages were not related to this loss and would not be covered under this claim." Exhibit D-12, 0041 (emphasis added).

Plaintiff then terminated People's Public Adjuster and hired David Burno as her public adjuster as October 8, 2017. Exhibit D-4, 0496-97. David Burno contacted Allstate representative, Alan Duddy, on October 17, 2017. Exhibit D-2, 0069. Burno asked Allstate to reopen the claim because he felt it should have been covered as a vehicle claim based on what the Plaintiff had told him. On October 20, 2017, Allstate representative, Alan Duddy, communicated with David Burno and advised him that the May 5, 2017 interior water damage incident was not caused by the May 2, 2017 Truck Incident. Alan Duddy advised David Burno to file a separate claim for the interior water damage if Plaintiff intended to pursue those damages. David Burno advised Plaintiff against filing a separate claim for interior water damage because this is a "standard policy and there was no wind damage to the Property which is required for a roof leak loss." **See** Exhibit D-2, 0071.

David Burno presented Doug Weiss with a photo which revealed a hole in the pent roofing created by the wires pulled down by the truck on May 2, 2017. At David Burno's request, Allstate agreed to have Doug Weiss of Rainmasters, Inc. reinspect the

Property. Doug Weiss reinspected Plaintiff's Property on November 9, 2017 and removed the tarp partially covering the area of roof near the wires. Doug Weiss observed long term damage to the shingles, but "no impact damage to the roofing or sheathing." He also found "no evidence of any damage to the shingle roofing or sheathing caused by the wires being pulled away [from the May 2, 2017 Truck Incident]." Exhibit D-6.

On November 30, 2017, Allstate representative, Holly Kelly, shared the results of the November 9, 2017 reinspection of Doug Weiss with David Burno, who contended that the May 2, 2017 Truck Incident caused a hole in the flat roof on Plaintiff's Property and agreed to provide photographs of this hole. *See* Exhibit D-2, 0078. On December 21, 2017, Allstate representatives, Holly Kelly and Alan Duddy, advised David Burno that Allstate paid for electric repair for damage from the wires being pulled out during the May 2, 2017 Truck Incident, and he had yet to substantiate his assertion that the May 2, 2017 Truck Incident caused a hole in the flat/rubber roof of the Property. *See* Exhibit D-2, 0079.

On January 18, 2018, Allstate representative, Holly Kelly, again asked David Burno for proof that the May 2, 2017 Truck Incident caused a hole in the roof of the Property, which he was unable to provide. Exhibit D-2, D-0087. David Burno then withdrew Plaintiff's Claim. *Id.* at 0087-88.

Plaintiff acknowledged that, other than the fact that she disagrees with Defendant Allstate's position as to the cause of the interior water damage to the Property, she has no evidence that anyone at Allstate has any ill-will toward her. She also acknowledged that Allstate did not make any misrepresentations to her and that they remained in constant contact with her. *See* Exhibit D-16, at 104:18-20; *see also* N.T., 02/16/21,

118:18—121:1. David Burno agreed that he had “good” communications with Allstate representative, Alan Duddy, with respect to Plaintiff’s Claim. *See* N.T., 02/16/21, 156:2-13, 174:10-14. Nor was there any evidence that Defendant Allstate attempted to influence the inspection or conclusions of independent roofing expert, Doug Weiss of Rainmasters, Inc. *See* N.T., 02/16/21, 237:20-14.

At Trial, Allstate representative, Alan Duddy, credibly testified that he relied upon the inspection or conclusions of independent roofing expert, Doug Weiss of Rainmasters, Inc. during the investigation of Plaintiff’s Claim. He also testified that he relied on the conclusions of independent roofing expert, Doug Weiss of Rainmasters, Inc. in determining whether the Policy covered the May 5, 2017 interior water damage at the Property.

III. CONCLUSIONS OF LAW

A. Plaintiff has not met her burden of proving Breach of Contract.

To prevail on a claim for Breach of Contract under Pennsylvania law, the Plaintiff must establish: (1) the existence of a contract, including its essential terms; (2) a breach of the duty imposed by the contract; and (3) resultant damages. “[A] party seeking damages for breach of contract ‘must be able to prove such damages with reasonable certainty.’” *Exton Drive-In, Inc. v. Home Indem. Co.*, 261 A.2d 319, 324 (Pa. 1969).

In the context of an insurance coverage grant, “the insured [Plaintiff] bears the initial burden of proving facts that bring [her] claim within the policy’s affirmative grant of coverage.” *Fry v. Phoenix Ins. Co.*, 54 F. Supp. 3d 354, 361 (E.D. Pa. 2014). Here, to establish coverage under the Policy, Plaintiff must show that the interior water

damage to her Property was a “sudden and accidental physical loss” caused by a vehicle.³

Courts “must construe the terms of an insurance policy as written and may not modify the plain meaning of the words under the guise of ‘interpreting’ the policy. If the terms of a policy are clear, a Court cannot rewrite it or give it a construction in conflict with the accepted and plain meaning of the language used.” *Allstate Fire & Cas. Ins. Co. v. Hymes*, 29 A.3d 1169, 1172–73 (Pa. Super. 2011) (quoting *Wall Rose Mutual Ins. Co. v. Manross*, 939 A.2d 958, 962 (Pa. Super. 2007), *appeal denied*, 596 Pa. 747, 946 A.2d 688 (2008) (citations omitted)). Courts “should not result in an absurd construction of the policy. Words of ‘common usage’ in an insurance policy are to be construed in their natural, plain, and ordinary sense, and a court may inform its understanding of these terms by considering their dictionary definitions. *Id.* at 1172.

The Policy explicitly limits coverage to “**sudden and accidental** direct physical loss” to Plaintiff’s property “caused by” a named peril, in this case, a vehicle. *See Robinson v. Allstate Property and Casualty Co.*, 306 F.Supp. 3d 672, 679 (E.D. Pa. 2018). “Sudden” means unexpected and unintended, and, when joined by the word “accidental,” also conveys a “temporal meaning ... i.e. abruptness or brevity.” *Id.* (citing *Lower Paxton Twp. v. U.S. Fid. & Guar. Co.*, 383 Pa. Super. 558, 557 A.2d 393, 402 (1989)). “‘Accident’ ... refers to an unexpected and undesirable event occurring unintentionally and [] the key term in the definition of the ‘accident’ is ‘unexpected’

³ Plaintiff attempts to shift the burden of proof to Allstate to justify the basis for its denial of coverage by relying on inapplicable caselaw that addresses the burden of proving the applicability of policy exclusions. Allstate’s denial is based on Plaintiff’s failure to establish coverage under the standard homeowner’s policy, not a policy exclusion.

which implies a degree of fortuity.” *Id.* (quoting *Donegal Mut. Ins. Co. v. Baumhammers*, 595 Pa. 147, 938 A.2d 286, 292 (2007) (citing *Kvaerner Metals v. Commercial Union*, 589 Pa. 317, 908 A.2d 888, 898 (2006))).

Plaintiff failed to establish that her loss was covered by the Policy. The evidence adduced at trial does not support Plaintiff’s theory that the interior water damage was “suddenly and accidentally” caused by damage to the Plaintiff’s roof when the truck pulled the communication and electrical wire away from the Property, below the roof. The wiring may have gotten entangled in the long-deteriorating shingles, felt paper, and exposed wood sheathing at the far ends of the pent roof, but Plaintiff did not prove that the entanglement caused the extensive interior water damage at Plaintiff’s Property three days later after the rainfall.

Nor does the evidence support Plaintiff’s alternate theory that the May 5, 2017 interior water damage was the product of a “sudden and accidental physical loss” which arose when the Truck Incident caused a branch and other debris to fall in the scupper box roof, forcing water to overflow down the rear wall after the May 5, 2017 rainfall. The photographs from the Truck Incident show that the tree on Plaintiff’s Property was pulled away from the house and toward Lowber Street and that branches were broken far beneath the roof line and did not land on the flat roof as Plaintiff contends. Moreover, the branch in the scupper box does not have freshly torn bark and appears to be aged and desiccated, which further indicates that its presence was unrelated to the Truck Incident. *See* N.T. 02/16/21, 282-84; *see also* Exhibit D-3, 0570.

The evidence shows instead that the extensive interior water damage was the product of long-term exposure to moisture and the lack of long overdue maintenance on

the roof, not a “sudden and accidental” physical loss covered by the Policy.⁴ And, to the extent that Plaintiff had established certain exterior “sudden and accidental physical loss” was caused by the Truck Incident, the record shows that Allstate properly compensated her.

We conclude, as a matter of law, that Defendant Allstate did not breach the Policy by not paying for the May 5, 2017 interior water damages and that Allstate is entitled to judgment in its favor as to Count I.

B. Plaintiff has not demonstrated that Allstate acted in bad faith.

Pennsylvania’s Bad Faith Statute provides as follows:

In an action arising under an insurance policy, if the Court finds that the insurer has acted in bad faith toward the insured, the Court may take all of the following actions:

- (1) award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%;
- (2) award punitive damages against the insurer; and,
- (3) assess court costs and attorneys’ fees against the insurer.

42 Pa. C.S.A. § 8371. 18.

To prevail on a bad faith claim, the Plaintiff must show by clear and convincing evidence that the Defendant did not have a reasonable basis for denying benefits under the policy and that the Defendant knew or recklessly disregarded its lack of reasonable basis for denying the claim. *See Terletsky v. Prudential Property and Casualty*

⁴ People’s Public Adjusters took a photograph of the flat roof on May 5, 2017 before I & L made repairs. Exhibit D-12, p. 15. This photograph reveals that bare roof edging at the rear of the house (which was later coated with roof cement) and that water could get “right underneath the edging and down into the house.” N.T., 02/16/21, 270:14-271:5 (discussing Exhibit D-12, p. 15).

Ins. Co., 649 A.2d 680, 688 (Pa. Super. 1994) (citations omitted) (emphasis added); *see also Rancosky v. Washington Nat'l Ins. Co.*, 170 A.3d 364, 377 (Pa. 2017).

Proving bad faith requires facts showing how the insurer acted unreasonably both in denying the policy benefits and later ignoring its unreasonable denial. *Sherman v. State Farm Ins. Co.*, 2017 WL 5559911, at *1 (E.D. Pa. Nov. 17, 2017). A Plaintiff must demonstrate that an insurer acted intentionally and recklessly in refusing to pay. A refusal to pay, based on a legitimate, genuine dispute as to damage causation does not equate to bad faith. *See, e.g., Bostick v. ITT Hartford Group, Inc.*, 56 F. Supp. 2d 580, 587 (E.D. Pa. 1999). It is also probative whether a Plaintiff establishes that the insurer breached its duty of good faith through some motive of self-interest or ill will. *See Rancosky*, 170 A.3d at 377.

In its defense, an insurer must show it conducted a review or investigation sufficiently thorough to yield a reasonable foundation for its action. *See Cantor v. Equitable Life Assurance Soc'y of the United States*, 1999 WL 219786, at *3 (E.D. Pa. Apr. 12, 1999). Bad faith will not be found where the insurer's conduct is in accordance with a reasonable but incorrect interpretation of the insurance policy and the law, and the insurer reasonably relies upon the conclusions of an independently retained expert. *See Bostick, supra*.

Allstate responded promptly to Plaintiff's claim for coverage, conducted a methodical and thorough investigation, relied on an independent expert in reaching its decisions, engaged in frequent communications with the Plaintiff and her public adjusters while investigating a claim, and reached a reasonable conclusion that the unambiguous terms of the Policy covered Plaintiff's claim for exterior damage to the Property but did not cover Plaintiff's claim for interior water damage. Where, as here,

there was a legitimate dispute over whether the Policy covered the interior water damage and the Plaintiff presented no evidence of ill-will on the part of the insurer, Allstate, we cannot find that Plaintiff met its burden of showing that Allstate acted in bad faith in its handling of Plaintiff's claims.

Bad faith may also be demonstrated by showing that the insurer has violated one or more provisions of related Pennsylvania insurance statutes, even if they do not independently provide for private causes of action. ***See Berg v. Nationwide Mut. Ins. Co.***, 44 A.3d 1164, 1174 (Pa. Super. 2012). In this case, Plaintiff cites to 31 Pa. Code Chapter 146 of the Unfair Insurance Practices ("UIP"), which requires the insurer to disclose the specific policy provision, condition, or exclusion upon which they base a denial. Plaintiff argues that Allstate's September 27, 2017 letter confirming that water damage related to vehicle loss was not covered is a violation of the UIP and thus a plausible claim of bad faith. We disagree. The September 27, 2017 letter succinctly, but clearly, states the specific reason why Allstate denied Plaintiff's claims: "Allstate has determined the extent of damage related to the vehicle loss on May 2, 2017 was limited to the exterior of the home. The interior water damages were not related to this loss and would not be covered under this claim." Exhibit D-12, 0041. We believe nothing more is required of Allstate under the UIP. Plaintiff's claim for bad faith on this basis is not actionable.


For these reasons, we conclude that Allstate is entitled to judgment in its favor as to Count II.

IV. CONCLUSION

We find that Plaintiff has not met her burden of proving that Allstate has breached the Policy, nor proved by clear and convincing evidence that Allstate acted in bad faith. We hereby enter a verdict in favor of Defendant Allstate Property and Casualty Insurance Company on Plaintiff's Breach of Contract and Bad Faith Counts in the Amended Complaint and, accordingly, enter Judgment in favor of Allstate Property and Casualty Insurance Company.

An appropriate Order follows.

BY THE COURT:



Stella M. Tsai, J.

March 31, 2021