

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

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3	THOMAS H. BATES,	)	
4		)	
5	Plaintiff,	)	
6		)	
7	vs.	)	Case No. 21-CV-705
8		)	
9	STATE FARM FIRE AND CASUALTY,	)	
10		)	
11	Defendant.	)	

TRANSCRIPT OF TRIAL CLOSING ARGUMENTS

NOVEMBER 7, 2022, at 2:55 P.M.

BEFORE THE HONORABLE JODI W. DISHMAN, JUDGE PRESIDING

Recorded by mechanical stenography  
Transcript produced by computer-aided transcription

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A P P E A R A N C E S

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1 (This transcript contains only the excerpted trial closing  
2 arguments:)

3 THE COURT: At this time, I recognize Mr. Miller for  
4 the plaintiff's closing argument.

5 MR. MILLER: You-all have heard a lot of evidence in  
6 a very short time. I -- I got to tell you it's been a very  
7 fast trial and a -- a lot of witnesses and a pretty dense,  
8 really, trial in a lot of ways, and your attention to the  
9 details and the evidence have been obvious to all of us.

10 I've been doing this a great long while. Actually, 38  
11 years is when I tried my first case to a jury. And we, in the  
12 outside world, hear a lot about the faults of our system; but,  
13 from the insider's perspective, I can tell you that it is by  
14 far the greatest system in the world; and the real reason it  
15 is, is just the one difference between us and everyone else,  
16 and that's you.

17 We have members of the community that come and tell us,  
18 after listening to the facts, listening to the law -- they tell  
19 us what they think about the facts, as we present them, and it  
20 helps everyone. It informs all of us: State Farm, everyone in  
21 here. It will let them know what they should think about the  
22 conduct of this case.

23 So, on behalf of all of us but certainly my client,  
24 Ms. Landeros, we want to thank you for your time and your  
25 attention.

1 Now, I only have a very short time to talk to you. I do  
2 get the last word, though, because we have the burden of proof,  
3 as you've heard. I get to go first; and then Mr. Leffel, I  
4 assume, will go; and then I will go last for a few more  
5 moments. So I want to visit with you about the things that I  
6 really think need to be said. Even though, I'm sure, there's  
7 a lot of little details that, maybe, ought to be talked about,  
8 we just don't have time.

9 The first thing are the instructions that deal with how  
10 you decide whether or not the case has been proven. First one  
11 would be Instruction 12, and the judge has read it to you, but  
12 you'll have these back -- to go back to you, and there's  
13 absolutely nothing wrong with us putting them up here, but it's  
14 three elements we have to prove for breach of contract -- these  
15 three elements, as the judge already read.

16 The first one is, is -- was there a contract formed?

17 I don't believe that there's any dispute about it. I  
18 won't put it up, but just the stipulation that the judge read,  
19 I believe, takes care of it. A stipulated fact, which is one  
20 of your instructions, is going to say that (as read), "All  
21 times material hereto, the Property was insured through a State  
22 Farm policy." So number one's proven.

23 There's even more proof than that -- that policy. As you  
24 can find, if you look at -- let's start with JX18.33.

25 You heard a lot about written discovery, and we're allowed

1 to ask certain questions, and the other side has to answer them  
2 and -- and keep updating them until they -- everyone's  
3 satisfied that they're correct.

4 Well, here -- this is called a "request for admission" --  
5 we asked to admit that Plaintiff had a policy with State Farm  
6 that was in full force continuously from the original policy  
7 inception date all the way through February 4th when he made  
8 the claim in '21.

9 We were refused -- I'm sorry.

10 We were referred also -- this says it was admitted -- to  
11 another interrogatory, if you'll look at JX18.40, and this is  
12 kind of important.

13 18.40.

14 We wanted further information; and, on the supplemental  
15 answer, it's been told to us and to you that State Farm  
16 maintains its objection; but, without waiving it, the original  
17 policy issue date of Plaintiff's policy with State Farm is  
18 October 10 of '10.

19 So the policy has been inception (verbatim) and full force  
20 and effect since 2010 all the way through the day and beyond  
21 that it was reported -- this hail loss was reported.

22 That's the first element.

23 They sort of -- I don't know -- indicated, maybe, that  
24 they're going to challenge this, but -- and whether or not  
25 Mr. Bates has to actually prove the for-sure date that the hail

1 damage happened and when that was and what policy. I'm not  
2 sure if Mr. Leffel will address that again, but I've heard a  
3 few little hints of it.

4 The bottom line is that's why I asked Ms. Jacome to slowly  
5 and carefully explain right up there in the first day that --  
6 the day she testified; and, if you'll remember, she very  
7 clearly said, "If we have a longtime insured like this, and  
8 they have a -- a hail claim, doesn't matter if they know when  
9 it happened. As long as we haven't already paid for it, then  
10 we're going to pay them."

11 There's also an OG, the original -- I mean, the  
12 operational guides, and you've got those, and you've got the  
13 one that matters. I won't go to it right now, but it's -- it's  
14 Number 88 and Number 91, if anybody wants to see it.

15 But State Farm literally gives a written version of what  
16 you're supposed to do in case of a situation where a deductible  
17 wasn't met originally, or there was damage that hadn't been  
18 turned in for something like hail -- in fact, specifically like  
19 hail and tells the adjusters, "You will pay for the loss on the  
20 day of the claim that's made and not in any way punish the  
21 insured because of the fact they don't exactly know when the  
22 hail hit."

23 Again, that's conforming completely with what Amy Lanier  
24 said and what Jonathan Marks said, as well as what Ms. Jacome  
25 said.

1           Furthermore, anybody that stands up here and says that  
2 they don't believe this was a covered loss -- ask yourselves,  
3 well, why did they pay for all the metals?

4           If this was not a covered loss, and they were challenging  
5 when it actually happened, and it mattered, why did they ever  
6 pay any metals and then pay again a little more in August of  
7 this year?

8           Doesn't make sense but just in case they bring it up.

9           Number 2 -- Element Number 2 on the contract claim, you  
10 have to show that the contract has been breached.

11           The -- I think at the end of the testimony today we were  
12 left with -- I'll challenge you to tell me if I've got this  
13 wrong, but there are hundreds of circular spots of damage on  
14 the roof, spread out across the whole roof sporadically,  
15 randomly; and the hundreds of circular spots of damage across  
16 the roof, he can't tell us what they are. State Farm could  
17 never tell us what they were.

18           You'll see in their brochure in Exhibit JX13 that they  
19 have all kinds of different possibilities of what they call  
20 "wear," but, when you look at those pictures, none of them have  
21 anything to do with what you can see on this roof.

22           I submit to you that the only credible person that's  
23 testified, who has no concern about the outcome, is Mr. Marks;  
24 and he said, "It's obviously hail. There's no doubt about it."  
25 In all of his nearly 40 years, I think it was, of looking at

1 these claims, that's hail.

2 The third element is we have to show there's some damage.

3 Well, of course, again, obviously, we've not been paid for  
4 the roof; right?

5 But there's a further instruction on that. It's  
6 Number 14.

7 In Number 14, the judge will -- or Judge will give you  
8 this instruction when you go back, but, at the end of that  
9 instruction, it said you should award damages -- if you approve  
10 it, you should award damages even if you are uncertain as to  
11 the exact amount. The amount of damages does not have to be  
12 proved with mathematical certainty, but there must be  
13 reasonable basis for the award.

14 Again, we have submitted to you in evidence the Aegis  
15 estimate for doing the job. He didn't submit the estimate for  
16 what the insurance coverage was; he submitted it for what he  
17 felt was going to be necessary to do the job.

18 It is an ACV policy. It is supposed to be depreciated.  
19 There is no doubt about it. But no one at State Farm,  
20 including the paid expert, never, to this day, has ever  
21 calculated what the AT -- CV value would be in their opinion.  
22 That's why this instruction says that we don't have to, and  
23 they don't have to. You can resolve it based on the evidence  
24 that's submitted. That is up to you.

25 Could we look at the verdict form right fast, please, on

1 Stage 1?

2 Here, we're dealing now with the first cause of action,  
3 breach of contract; and I suggest to you that, if you agree  
4 that the plaintiff has proven the breach of contract as I've  
5 just outlined, then you would check A; and that would be, of  
6 course, in favor of Thomas Bates; and then you would go to the  
7 line and decide, based on the information you have, what is the  
8 value of the breach of the contract?

9 Again, up to your discernment.

10 All right. The next part that the judge read to you is  
11 the insurance company, all of them, have a duty to deal fairly  
12 and in good faith. That obligation of -- of insurers, that  
13 obligation of good faith and fair dealing, is termed as a  
14 "duty." It's not a choice. It's not if you want to. If  
15 you're going to take people's premium, then you must  
16 investigate and evaluate claims fairly and reasonably and in  
17 good faith.

18 You might remember Mr. Mendoza telling us in good faith,  
19 fairly, reasonably, like you'd want to be treated. That's what  
20 Mr. Mendoza said.

21 Not supposed to climb on the backs of insureds to get a  
22 promotion. You're not supposed to want to save money by  
23 saying, "Too many hail claims are being paid," and decide to  
24 start denying them just to save money.

25 Businesses can make decisions all the time to cut costs,

1 even insurance companies, but not when it comes to the valid  
2 claim covered by the policy that you took premium for. That's  
3 the difference. That's why you have specific instructions in  
4 the law about insurance company's duty, and you're seeing them  
5 today.

6 How do you decide if they -- elementally, how do you  
7 decide if they committed bad faith?

8 Well, under Instruction 18, the judge gives you the five  
9 parts of -- or four parts of the decision, but the one that I  
10 think is the place that matters, really, is the subparts of  
11 number two. The rest are pretty obvious.

12 The subparts of number two: "State Farm's refusal to pay  
13 a claim in full was unreasonable under the circumstances,  
14 because" -- either -- this is all -- either one of these works.  
15 You don't have to have all of them. You don't have to have two  
16 of them -- "it did not perform a proper investigation, it did  
17 not evaluate the results of the investigation properly, or it  
18 had no reasonable basis for the refusal to pay the claim."

19 There is no dispute in this case and has not been from the  
20 opening bell, if you are going to properly investigate a hail  
21 claim, you must get on the roof.

22 Number two, you must have the ability to see the damage,  
23 feel the damage, inspect the damage that only an in-person  
24 inspection allows.

25 And, number three, you have to know what you're looking

1 at. You must be trained to know what hail damage is because --  
2 just from the fact that you've heard so many different opinions  
3 about this case ought to be enough to show that you can say  
4 anything about damage to a roof if you want to.

5 State Farm only had one person that ever got up on that  
6 roof. So, first of all, we can focus completely on Ms. Jacome,  
7 and she admitted in deposition and in court and never changed  
8 it that, prior to that climb of the ladder, she had never been  
9 shown by a single human not just at State Farm but anywhere  
10 what hail damage looks like or feels like. In all the claims  
11 that he -- she went out on, all the trainers -- they said  
12 nothing she was seeing was hail damage, and then they turn her  
13 loose to do it on her own.

14 The second thing I'd like to say really approaches both  
15 the number one and two, improper investigation and improper  
16 evaluation.

17 The mistakes that we talked about, I wondered sometimes if  
18 you-all would think, Those are pretty picayune mistakes you're  
19 showing us there.

20 It wasn't the point. The point is not whether or not they  
21 cost a lot of money or saved a lot of money. The point was how  
22 many, as a supervisor, do you see before you realize that the  
23 person making them doesn't have the first clue what they're  
24 doing, and it's time to send somebody else out there?

25 It's not -- shouldn't be lost on anyone that we have a

1 good example of the final word on the problem, and that is,  
2 when Ms. Draper, two weeks or so after this inspection, got  
3 texts from Jacome, where she's on another roof sending pictures  
4 of one slope of a roof that are so bad that it must be  
5 something else -- it can't be hail. "May be mechanical  
6 damage," is what she tells us -- somehow, they managed to  
7 secure a second inspection there.

8 Maybe it's because they paid for two slopes and not one.  
9 I don't know.

10 But, when they -- when they went out there again, this  
11 time they sent Kelly Wienstroer, one of the people that knew  
12 what she was doing. Before she even got up on the roof, she  
13 said, "That's the worst hail damage I've ever seen on the slope  
14 you've denied."

15 Keep in mind it wasn't just Jacome that denied it. She  
16 sent the text dutifully like she had to, to Ms. Draper, and she  
17 denied it.

18 And, of course, after Kelly Wienstroer went out there,  
19 they paid the whole thing.

20 How in the world at that moment does somebody not say,  
21 "Let's go back and look at the other inspections"?

22 There wasn't that many that Jacome did.

23 At the same time, they're getting things from Jonathan  
24 Marks and Gary Bates, screaming, "Help" -- especially him,  
25 "Somebody, pay attention. Is anybody paying attention?"

1 No one responded.

2 How can that be explained by anything other than a  
3 straight corporate scheme to put saving money ahead of making  
4 decisions legitimately about a claim?

5 The third prong of those elements -- well, the subprong  
6 there, the highlighted one, it had -- the insurer had no  
7 reasonable basis for the refusal to pay the claim. Very  
8 important here: no reasonable basis.

9 They've admitted -- I'm sorry.

10 Amy Lanier testified that it all jumped off with  
11 Jacqueline Draper declaring bad faith. "We're paying too many  
12 hail claims," and then she proceeded to stop it.

13 Put up 19, please.

14 "Bad Faith - Damages," here's the things that can be paid  
15 for: all financial losses -- that's up to you -- and mental  
16 pain and suffering.

17 All financial losses literally means just that: whatever  
18 you say it is. No mathematical formula required.

19 And no matter how you define suffering, that's up to you  
20 as well.

21 In the 602 days, since the claim was not paid on  
22 February -- I'm sorry -- March 15th and denied on March 15th,  
23 602 days to today, just by VanDorn's hourly rate, that'd be  
24 \$4 million.

25 Whose time ought to be worth more to State Farm: VanDorn

1 or their insured of about 55 years?

2 They pay some pretty valuable people on TV, and that's  
3 another thing. These celebrity athletes, we call heroes  
4 sometimes. I've heard that: hero.

5 They may be able to do something really neat in football  
6 or baseball, but hero?

7 You-all had the opportunity to sit with a hero all week, I  
8 suggest a humble man, who was a hero for his time, one of the  
9 few left from his time. You could barely drag out of him the  
10 matters of valor and heroism that he performed. He missed a  
11 whole day's work in the foxhole when he got knocked to the  
12 ground with shrapnel in the back of the head.

13 Gary Bates just trying to tell them, "You don't know what  
14 he's been through already. He's not going to be bullied," nor  
15 is his son that he raised.

16 And they really knew about Jonathan Marks, I submit to you  
17 another man of honor, because they had him on the payroll for  
18 almost 20 years. They knew him.

19 If you could put up the verdict form. I'm running out of  
20 time.

21 In this particular case, if you agree that State Farm  
22 violated any or each or all of those elements on subpart 3 and  
23 the rest, then you would check the first box, A; and you would  
24 decide completely, based on your own analysis, what you should  
25 fill in that blank.

1 The next one, 20, here, we have another disjunctive for  
2 you to consider. You can decide -- if you decide that there  
3 was bad faith -- that has to be first, but, if you decide that,  
4 then you can go right to this one and decide whether or not  
5 there are punitive damages worthy of award in this case.  
6 There's two different ways you get there.

7 If you could put up that verdict form on the second page.

8 There are two ways to get there: either find that there's  
9 been a reckless disregard by State Farm of its duty to deal  
10 fairly and in good faith with their insured, or/and, either way  
11 or both, you can find that intentionally they did this, with  
12 malice.

13 Malice is further designed (verbatim) -- can be hatred,  
14 can be spite, can be ill will. I suggest to you that has  
15 nothing to do with this case. They don't know Mr. Bates. They  
16 don't care to know him.

17 Doing a wrongful act intentionally without just cause.

18 Of course, I'm partial. We know that. I've been living  
19 this for 18 months, but I suggest to you that we have satisfied  
20 that burden on both regards.

21 Amy Lanier made it very clear -- and she didn't want to be  
22 here, I'm quite certain. She'd been handling these kind of  
23 claims for 14 years.

24 Sharon Arnold said she was a fine rep.

25 As soon as Ms. Draper comes in, she takes away the

1 authority to pay roofs only.

2 Had to wait around for permission to do her job. She'd be  
3 up on a roof with a contractor and literally have to get  
4 permission from her texted photos before she could decide  
5 whether she's going to mark the roof like she wants to or  
6 should, take the pictures, go fill out the paperwork, and make  
7 a payment.

8 If she had to write up a denial because Ms. Draper said it  
9 was going to be denied, and she said she estimated 40 times out  
10 of 100 that she submitted in her year for her one place on  
11 one -- on the team of six people.

12 She would have to write things in the computer that she  
13 did not agree with, and a lady of conscience, I submit, finally  
14 couldn't take it.

15 There are some things, even in a 20-year job, where you  
16 have seniority, you're making a good living, you like your  
17 job -- I think she said she loved her job -- and she turned her  
18 back on that job because -- and it crawled all over me to  
19 listen to them talk about how she never tried to tell anybody.

20 She confronted Jacqueline Draper. She told a supervisor.  
21 Nobody wanted to hear it.

22 Actually, I don't think there's a lot of difference  
23 between her and Jacome in this regard. If you really want to  
24 know what I think, I submit to you that the only difference  
25 between Jacome and Lanier is Jacome didn't know what she was

1 denying should have been approved because she didn't get any  
2 training on it, but even she knew something was wrong. She  
3 didn't even stay but a few months. She didn't like the feeling  
4 that she had for doing the -- this job the way she was supposed  
5 to for Ms. Draper.

6 MR. THOMAS BATES: (Unintelligible.)

7 MR. MILLER: You okay?

8 Been a long couple of years for Mr. Bates.

9 Again, if -- and the judge tells you this, but I'll tell  
10 you again: If you agree that this is worthy of consideration  
11 of punitive damages, you check those boxes that you do find,  
12 that you do find; and then we'll come back; and you won't be  
13 here a long time. The next part's very, very short. There's  
14 just a few things to show you and talk about, and then you'll  
15 be allowed to go back out and make a final decision about what  
16 you want State Farm to hear from this courtroom.

17 Thank you.

18 THE COURT: Thank you, Mr. Miller.

19 Mr. Leffel?

20 MR. LEFFEL: Thank you, Your Honor.

21 Ladies and gentlemen of the jury, I too, on behalf of  
22 State Farm, want to thank you for your service. Not only, as  
23 Mr. Miller said, did we present you with a lot of information,  
24 although this is very important to -- to both parties, a lot of  
25 this is pretty mundane and dry. You probably learned more

1 about roofs and what a hail bruise is than you ever thought you  
2 might learn, but you-all have been incredibly attentive.

3 And, you know, we're -- we're going to go vote tomorrow,  
4 some of us; right?

5 And there's two ways we get to participate in democracy:  
6 at the ballot box and in the jury box.

7 And I know this is an imposition, but, when I -- when I  
8 get the opportunity to talk to jurors after a case, I find that  
9 they take this charge very seriously, and a lot of them have a  
10 really positive experience participating in our democracy this  
11 way. So thank you for that.

12 The Court has instructed you that what the lawyers say is  
13 not evidence, and that's true. We're advocates. But you're  
14 entitled to consider who kept the promises they made on opening  
15 statement. I'm going to talk just real briefly about a few  
16 things that Mr. Miller raised in his first opening.

17 No one has ever said that this loss is not covered. There  
18 was covered damage to this roof, and it was paid for, and you  
19 have seen the evidence of that.

20 What they disagree with is -- is the scope of how much was  
21 covered under the policy. That's where there is a  
22 disagreement, and you've heard so much evidence from both sides  
23 on that.

24 Each side says, "I think this damage is covered, and  
25 here's why. Here's my photographs to support that."

1 The other side says, "We don't believe that's covered  
2 damage based on our training and our understanding, and here's  
3 our photographs and our evidence."

4 And, when you think about that in the context of bad  
5 faith, that's what we call a "bona fide dispute." Each side is  
6 looking at the same evidence and reaching different  
7 conclusions.

8 You know, Mr. Miller mentioned that Joint Exhibit 13 and  
9 said that there's all these "other than hail" items that he  
10 says were nothing like anything that was found on this roof.

11 You know what else was not on this roof?

12 Any of the really bona fide examples of significant hail  
13 damage that you saw on Exhibit 13. You remember the  
14 juxtaposition of those pictures.

15 I heard him say, when you got to the part of the bad faith  
16 jury instruction, that you got to conduct a proper  
17 investigation, that you got to get on the roof.

18 State Farm got on this roof. Ms. Jacome inspected it.

19 You got to feel the damage.

20 Ms. Jacome said, every time she put a line on her test  
21 square, that she felt that for a bruise, like an apple. Not  
22 rocket science.

23 And then he says you got to know what you're looking at;  
24 and this big evidence, this big tell there is that, apparently,  
25 when she was training in January, there weren't any hailstorms

1 for her to go out on; but that doesn't mean that, in the months  
2 before that, while she's training in a classroom, that she  
3 wasn't getting experience on identifying hail.

4 Think about just the videos you've seen in this case that  
5 demonstrate the efforts that State Farm has gone to, to help  
6 people identify hail; operational guides that describe things  
7 like bruising; and even acknowledge, as so many witnesses have,  
8 that it can be difficult to ascertain.

9 He wants to talk to you about a claim that, apparently,  
10 there was text messages about that -- that have nothing to do  
11 with this case as evidence that -- that -- that Ms. Jacome  
12 wasn't trained.

13 You weren't presented any evidence on any other claim that  
14 Ms. Jacome handled.

15 You weren't shown what was going on, what happened, what  
16 she was looking at, and why she may have been confused about  
17 why a final slope, when she had covered several others, may  
18 have been damaged, and you're supposed to base your verdict on  
19 the evidence you were actually presented.

20 You weren't presented with any evidence on that.

21 And it kind of cuts against this whole theory that we're  
22 denying claims when there are examples of a case where, at  
23 first, we were totaling three slopes, because, again, there was  
24 obvious hail damage, and then we totaled the fourth slope.

25 Talked about Amy Lanier, and Amy Lanier admits that she

1 does not know anything about the Bates claim. She left State  
2 Farm months before it even arose.

3 She was able to provide no specifics on cross-examination  
4 when asked, "Tell us about these claims that you felt like you  
5 disagreed with." Couldn't provide one specific example as --  
6 even as specific as the example that Mr. Miller just gave you  
7 on this alleged second Jacome roof.

8 He told you Ms. Jacome -- he told you Ms. Jacome left  
9 State Farm because she was uncomfortable working for Jacqueline  
10 Draper.

11 Did Ms. Jacome ever say that?

12 She did not.

13 You remember what she said?

14 "I left because I could make more money as an independent,  
15 and I needed money to take care of the little girl that I  
16 adopted from Russia, who had a missing eye," and she had to  
17 raise \$35,000.

18 That's why she left.

19 Is Mr. Miller being fair with you about the facts?

20 Let's take a look at Instruction Number 6. You've been  
21 read this. This is that "burden of proof by preponderance of  
22 the evidence"; and, if we look at that, we can see that it  
23 tells you, you must be persuaded, considering all the evidence  
24 in the case, that the proposition on which the party that bears  
25 the burden is more probably true than not true; and that

1 doesn't mean more witnesses that testified to a fact. It means  
2 what seem to you more convincing and more probably true than  
3 not true.

4 Mr. Bates is a hero, and, when he started telling his  
5 story about his time in the war, I was just as riveted as you  
6 were.

7 Why?

8 Because we all know people that serve, people like my  
9 grandfathers, each who served in the war; and I wanted to hear  
10 what he had to say because I've lost them; and I don't get to  
11 hear their stories anymore.

12 But, as you heard Mr. Gary Bates say, the fact that we  
13 honor their service has nothing to do with whether there was  
14 hail damage that didn't get paid on this claim; and this Court  
15 has told you that your verdict needs to be based on the  
16 evidence and that you should not let sympathy, sentiment, or  
17 prejudice enter in your deliberations. That's all I'm going to  
18 say about that.

19 Told you this case presents a question of what is and is  
20 not covered under the policy, and that's what it is, nothing  
21 more.

22 You had an opportunity to see a lot of information from  
23 State Farm, but I want to draw your attention to Joint  
24 Exhibit 2 at 7. That's that commitment to policyholders, and I  
25 think, in two succinct statements, it states -- sums up the

1 philosophy: "In addition to your obligation to deal fairly  
2 with each policyholder, we have an obligation to pay -- to pay  
3 only covered claims in the proper amount. Payment of those  
4 claims not covered unnecessarily increases insurance costs for  
5 all policyholders."

6 State Farm is a mutual company owned by its policyholders,  
7 people like me and others, who have their policies.

8 The evidence, again, shows that each party looked at the  
9 same evidence and saw something different.

10 Let's take a look at Instruction Number 12. You saw it  
11 with Mr. Miller. These are the elements of a breach of  
12 contract claim.

13 There is no dispute. I agree. There was a contract.

14 So you just need to start with Number 2 and then go to  
15 Number 3 and determine whether -- if -- first, if there was a  
16 breach and, second, if you find a breach, whether there was  
17 damages caused by that breach, but I want you to think about a  
18 couple of things when you're considering that.

19 You heard Mr. Marks testify that a hail loss must have  
20 occurred during the policy period.

21 Now, they're trying to suggest that, if you had a policy  
22 for 10 years, it's just like one big policy.

23 You're consumers of insurance, and you know that's not how  
24 it works.

25 You pay a premium. There's a policy term. It runs from

1 one year to the next year. When it ends, you got to pay a new  
2 premium. There may be changes. The insurance company sends  
3 you that little mailer that says, "Hey, you need to read this.  
4 We made changes to your policy."

5 Each successive year is a new term, and even their own  
6 expert, who was a State Farm guy, said, "I get that. When I'm  
7 looking for hail, I had to prove that it occurred under the  
8 policy period."

9 You heard no evidence from Mr. Marks or anyone else  
10 establishing that this hail that they allege that damaged  
11 probably -- when that, in fact, occurred, because we know about  
12 that May of 2019 hailstorm -- or, I guess, it was March of '19  
13 that was inspected by Marks in '19, 2-and-a-quarter-inch hail;  
14 and that's the same one that Mr. Marks went out and looked at  
15 and said, "This is not enough hail to make a claim."

16 There's evidence that 20 months pass after that May  
17 inspection there's no real conversation about this roof until  
18 Mr. Marks texts Mr. Gary Bates and says, "Hey, I'm looking for  
19 some work. You still want to replace the roof on that rental  
20 property?"

21 "If so, I can find you a hailstorm that you can use to  
22 make a claim."

23 He hadn't even been back out to the property to confirm  
24 any damage, told you January's a slow month when he's drumming  
25 up business.

1           There was no urgency. The tenant wasn't complaining. The  
2 roof never leaked. So two years after 2-and-a-quarter-inch  
3 hail, the roof never leaked.

4           Mr. Marks and Mr. Gary Bates were biding their time,  
5 waiting for the right storm, to get the insurance company to  
6 pay for the roof on their investment property. It's on these  
7 facts that they allege breach of contract.

8           Mr. Marks admits he doesn't even know if the decking he  
9 put in his estimate should be paid.

10           You've seen dozens and dozens of pictures of this roof.

11           You saw examples of the very thing that State Farm  
12 identified as being wear and tear: extensive granular loss at  
13 the edges, things like JX3, Number 3, and JX3.4.

14           Nobody's coming in here and telling you that that worn  
15 edge is hail damage.

16           You got to see Mr. VanDorn's test square, and he went  
17 through each one of the photos in his test square and explained  
18 to you that he felt it and that it didn't have the trademark  
19 bruising to make it hail damage.

20           Ms. Jacome told you that she did the same thing.

21           You've heard that the physical evidence tells a story, and  
22 that includes not what's on the roof but also what's around on  
23 the collateral items. That's an important part of the story:  
24 the lack of collateral damage supporting that there had been  
25 recent hail.

1 That evidence, ladies and gentlemen, was un rebutted.

2 There were some items that needed to be supplemented.

3 Mr. Miller admits they were not expensive. Doesn't matter.

4 They needed to be paid; and, when it was brought up, what was  
5 done, State Farm paid it, even after they were sued for bad  
6 faith.

7 Heard Mr. VanDorn's testimony about how you would expect,  
8 when you had a shingle tab, that, if hail really is randomly  
9 falling like we saw on that 2012 claim -- you'd expect there to  
10 be a lot more hits on the field than everything being at the  
11 edge. I mean, he found the exact converse. Something to the  
12 tune of 70 to 80 percent of all the damage was on the edges?

13 There has been more than adequate evidence for you to make  
14 the finding that all the damage that State Farm owed for was  
15 paid.

16 There's even evidence that State Farm paid for things that  
17 they didn't owe, like that HVAC -- that's at JX3, I think,  
18 maybe 7 or 9 -- that HVAC vent cover, you know?

19 State Farm paid for that in 2012. They paid for it again  
20 in '21.

21 Mr. Marks admits that he can't produce the evidence that  
22 that was replaced.

23 Things like the garage door. Remember Mr. VanDorn telling  
24 you how he looked at all those marks that were in the same  
25 location on every panel, and he didn't think that was hail

1 damage?

2 That was like a \$1,116 item paid -- paid for by State  
3 Farm.

4 If you agree -- let's take a look at the verdict form, if  
5 we could.

6 That first item is breach of contract; and, if you  
7 agree -- ask yourself whether they've met their burden of truly  
8 proving to you by a preponderance of the evidence that, in  
9 fact, there were more things that were owed, because all I  
10 could hear -- or all I saw were there was an agreement that  
11 there was something else that was owed here that hadn't been  
12 paid -- was one Corbin Swain photo that showed an indentation  
13 down to the mat; and you know because you've been told that  
14 that was not part of the evidence that was ever sent to State  
15 Farm, not part of what they had in their disposal to -- to --  
16 to consider when they were paying. Mr. Marks never included a  
17 photo like that.

18 That's the only thing that everyone admits was a hail hit.

19 Mr. Miller talks about the fact you can call it whatever  
20 you want, you know.

21 I don't agree. You got to be able to back it up with the  
22 science, but, if -- if he's right, and State Farm can call it  
23 whatever they want, so can their roofer.

24 Everybody looked at the same evidence and reached a  
25 different conclusion. You have had those experiences in your

1 life.

2 But I understand you may not agree, and, if you don't  
3 agree, and you think there is more damage that you know has not  
4 been paid, listen to this: State Farm wants you to make  
5 Mr. Bates whole under this policy if you think more money's  
6 owed.

7 Evidence is there to reach the conclusion that it's not,  
8 and, if you agree, check B; but, if you don't, check A and fill  
9 in that blank and give them the number that you think was left  
10 out; but, when you're considering that, consider some things:

11 Consider the fact that the only evidence that you've got  
12 is that Mr. Gary Bates said he's relying on the \$18,000  
13 estimate. \$6,600 of that is decking that Mr. Marks admits he  
14 doesn't know needs to be replaced. \$1,116 was the garage door  
15 that Mr. VanDorn says probably shouldn't have been paid. They  
16 owe their deductible, and, plus, there's been \$641 in prior  
17 payments.

18 And so the point is, if you add all that up -- and,  
19 remember, the \$18,000 is not ACV. That's replacement cost  
20 value.

21 So, again, it still has to be depreciated; but, if you  
22 take all those things out that are questionable, it takes that  
23 \$18,000 estimate down to \$9,300 before depreciation.

24 So, if you award damages, I'm just asking you to consider  
25 some of the other evidence that you heard.

1 Now, before I move on, I want to talk about one more  
2 thing, and I mentioned it a minute ago.

3 Corbin Swain, the engineer -- you heard the evidence  
4 that -- that -- that, at the inspection, Ms. Jacome was told by  
5 Mr. Marks at the very first meeting that they were going to  
6 hire an engineer.

7 You heard evidence that they, in fact, hired that  
8 engineer.

9 You heard evidence that he got on the roof with Mr. Marks.

10 Ladies and gentlemen, where is that engineer?

11 I'm sure Mr. Miller will give you a reason when he gets  
12 back up here.

13 Mrs. Bivins from the agent's office, Shari -- that's the  
14 email we saw -- saw 25 times that had the 25 pictures -- she --  
15 she said in later correspondence that you saw, "If you want to  
16 get a second inspection, one option you have is to hire an  
17 engineer."

18 You heard Mr. Gary Bates say, "If we had just gotten a  
19 second inspection, we wouldn't even be here."

20 If the agent's office is telling them that, "If you hire  
21 the engineer, that could be a pathway to a second inspection,"  
22 why wouldn't they have done that if he could support what they  
23 were saying?

24 If Mr. Marks is to be believed that every single blemish  
25 on that roof, every single one -- that was his testimony -- is

1 not hail, ask yourself how credible he is, and couldn't he  
2 certainly have been corroborated by that engineer?

3 Where's that engineer?

4 Let's take a look at the bad faith jury instruction, if we  
5 could, and that is going to -- you're on top of it.

6 Go ahead and pull that up where, maybe, even blind people  
7 like me can read it.

8 Now, here's the deal: If you find in favor of State Farm  
9 on the breach of contract, if you agree, your work gets really  
10 easy, because what is the first element that must be proven?

11 And -- and -- and each one of those things has to be  
12 proven. He's got to prove that there -- that State Farm was  
13 required under the insurance policy to pay Mr. Bates's claims.  
14 That's basically that more money was owed, that the policy was  
15 breached.

16 So, if you find that the policy was not breached, that  
17 they didn't prove more money was owed, you don't have to go any  
18 further. Okay?

19 But, assuming you awarded that, let's go on and talk a  
20 little bit more about what else it says; and, although each  
21 element must be proven -- I agree with Mr. Miller -- when you  
22 get to number two, it's either/or on the -- on the subparts;  
23 and -- and he read them for you. It says (as read), "The  
24 refusal to pay was unreasonable under the circumstances,  
25 because State Farm did not perform a proper investigation, it

1 did not evaluate the results of the investigation properly, or  
2 it had no reasonable basis for its refusal to pay the claim,"  
3 and that's -- I mean, focus on any one of these, and we're  
4 going to talk about them, but let's start there.

5 Can you sit around, based on all the evidence you've  
6 heard, and look your fellow jurors in the eye and say, "State  
7 Farm had no reasonable basis for its decision, none at all"?

8 Consider the undisputed evidence that you heard from State  
9 Farm and even Mr. Marks that hail can be subjective. It can be  
10 hard to determine.

11 Consider the words that you saw Mr. Marks write in his  
12 email to Ms. Bivins at the agent's office. "I realize there  
13 are differing opinions on what should be considered legitimate  
14 hail damage or what may be a -- cosmetic in nature or a  
15 blemish."

16 He -- he gets it. He understands that this can -- these  
17 can be tough calls.

18 Let's talk a little bit about the fact that, in that email  
19 to Ms. Bivins, it's been established he didn't send a picture  
20 of any dented mats for State Farm to consider. On these facts,  
21 can you say that it's more likely true than not true that State  
22 Farm did not conduct a reasonable investigation?

23 What did they do?

24 As many witnesses have said, the physical evidence tells a  
25 story.

1 Ms. Jacome followed established procedures for inspecting,  
2 procedures that were carefully constructed in State Farm's  
3 guidelines that are designed to ensure a good faith claim  
4 handling: She walked the elevations, noting what damage she  
5 could find. She noted a lack of spatter where spatter should  
6 have been found from recent hail. She got on the roof. She  
7 performed her test square. She felt the blemishes. She found  
8 none.

9 Ms. Jacome, on her own, determined that she didn't think  
10 that this was damage by hail beyond the metals and things that  
11 she was covering.

12 Let's look at that instruction one more time. Okay?

13 Third element is -- is -- is, once you've gone through  
14 that analysis, you've got to decide whether you, in fact, think  
15 that State Farm had breached that duty of good faith and fair  
16 dealing; and then you got to establish that any violation by  
17 State Farm in this duty and fair dealing was the direct cause  
18 of an injury to Mr. Thomas Bates. Okay?

19 And you heard Mr. Thomas Bates say he didn't have much or  
20 any involvement in this claim.

21 So there's a number of theories that have been advanced  
22 where Plaintiff has grasped for something to try to make this  
23 case about more than just a dispute of what is or is not  
24 covered, and all those theories center on Ms. Jacqueline  
25 Draper. The way they describe her, I was surprised that she

1 didn't have horns coming out of her head when she appeared on  
2 the video from Georgia.

3 Let me tell you a little bit about what we've got with  
4 Jacqueline Draper:

5 She's 33 years old.

6 When people like Mr. VanDorn and their expert, Mr. Marks,  
7 were transitioning out of careers at State Farm, you know what  
8 Jacqueline Draper was doing in 2008?

9 She was graduating from high school.

10 She graduated from college in 2012, tried to get into the  
11 Peace Corps; and, when that didn't work out, the restaurant  
12 where she was working to pay her way through school had some  
13 customers from State Farm; and they said, "You know what,  
14 Jacqueline?

15 "You ought to apply and start your career at State Farm."

16 That's who they're trying to tell you was the mastermind  
17 of a Hail Focus initiative, the woman that had her very first  
18 leadership position in Oklahoma after being with the company  
19 for about nine years, the 33-year-old mastermind of Hail Focus.

20 Now, if you believe them, not only was she the mastermind,  
21 but she was given a production staff to make videos called  
22 "Hail Focus." She got to borrow team managers from  
23 Bloomington. She got production for music and fancy graphics.

24 Does that seem plausible to you?

25 I know they're not saying she made the videos, but that's

1 all the evidence was of Hail Focus. They had videos that said  
2 "Hail Focus." They also had ones that said "Water Focus" or  
3 "Vandalism Focus." It's training, the very thing that they're  
4 saying we didn't do for our people.

5 And what was in those videos?

6 Information on how to identify hail and how to pay valid  
7 claims.

8 That's a bad thing?

9 There's no prohibition against you using your common  
10 sense.

11 Mr. Miller told you about some other theories they've got  
12 in opening statement like State Farm did not care about the  
13 training that -- of Mrs. Draper's team because it was really  
14 Ms. Draper that made the decisions.

15 Think about all the information. You heard from every  
16 witness extensively about the training, even Mr. Mendoza, who  
17 sits at a desk, you know, and is trying to resolve issues. He  
18 talked about going and getting hail training, watching the  
19 videos. He spoke articulately about how to identify hail  
20 damage.

21 The training is not a problem here. State Farm has  
22 endeavored and made guidelines to make sure people are trained.

23 You can be inexperienced, sure. You got to start  
24 somewhere. But that's why this next part of their theory  
25 doesn't make sense. If you got someone who's inexperienced --

1 and -- and everyone here in this room has -- has started a job.  
2 I've got young attorneys that are working with me, and they are  
3 going to be fantastic, but are they -- are they as fantastic  
4 today as they may be 20 years from now?

5 In those situations, you want to have someone who is a  
6 good leader, who's willing to coach and mentor people. That's  
7 not conduct that should be punished. It's conduct that should  
8 be lauded.

9 Keep in mind that Ms. Draper testified she had never even  
10 seen those Hail Focus videos.

11 The other theory they advance is that Mrs. Draper was  
12 stripping her team of authority, and she's the one that was  
13 making those decisions, and I want you to ask yourself if that  
14 theory fits the facts of this case, because here's what the  
15 evidence showed on that:

16 It is undisputed that Ms. Jacome inspected that roof and  
17 made her call and said she thought it was wear.

18 Mr. Marks corroborated that, when he arrived at that  
19 inspection, Ms. Jacome said, "I looked, and I think you got  
20 wear on this roof."

21 He said, "Well, will you look at it with me again?"

22 She said, "Sure."

23 So they get back up on the roof together. They start  
24 looking at things. He says he got to show her everything he  
25 wanted her to see, and she again told him it was wear, but he

1 disagreed, and so she said, "You know what?

2 "Because you disagree, I'm going to check in with my  
3 manager."

4 It was not secret. She told him that's what she's going  
5 to do.

6 And then, as Mr. Marks says, she said that she would  
7 follow up.

8 Well, she did just what she promised to do. She contacted  
9 Ms. Draper, she talked about what she was seeing, and then she  
10 calls Marks back and says, "I did, in fact, talk to my manager,  
11 and she agrees with me that this is wear."

12 So does it fit their theory that this top secret plan --  
13 and -- and, by the way, the other part of the theory was that  
14 you had to contact Jacqueline Draper if you were going to  
15 deny -- I'm sorry -- if you were to pay a total or partial  
16 roof.

17 Here, she didn't -- she wasn't paying a total or partial  
18 roof. She was paying for soft metals, and she didn't think  
19 that the shingles were -- so -- so, even if their theory was  
20 true, it doesn't fit.

21 The undisputed evidence was that Mr. Marks was being  
22 contentious, and so, being a new person, she reached out to her  
23 supervisor again. That should be encouraged.

24 Let's talk about Ms. Jacome. They've described her as  
25 being green. She was new as a staff adjuster, but, before

1 coming to State Farm, she had been working for three years,  
2 working some of the most complex total losses out in California  
3 and the wildfires. She had a lot of experience, and that's  
4 what Jacqueline said she brought to the team. She identified  
5 that experience and brought her on. So this idea that she was  
6 not trained, that she was not experienced, it doesn't add up.

7 Use your common sense.

8 She underwent more training when she became a staff  
9 adjuster.

10 But, when you're considering this issue of bad faith, of  
11 whether the evidence demonstrated bad faith as opposed to a  
12 legitimate disagreement, I want you to ask yourself this: Ask  
13 yourself whether, in today's world, any of us any longer has a  
14 right to be wrong. Do we have the right today to make even  
15 honest mistakes without someone coming in and assigning some  
16 kind of nefarious motive?

17 Let's talk about Amy Lanier. She left State Farm only  
18 after she had found a new job, and she stood right up in that  
19 chair and told you that the only reason she gave for leaving is  
20 that she wanted to get into leadership and that she didn't  
21 think those opportunities existed for her at State Farm.

22 Maybe she didn't like having a young up-and-comer like  
23 Jacqueline Draper, 33 years old, being her boss after she had  
24 been there for 20 years and had never gotten the promotion.

25 I'm not -- I'm not suggesting -- I'm not -- I'm not

1 suggesting I do know, but something was off between the two of  
2 them.

3       Asked for details about claim decisions that she disagreed  
4 with. She could not provide you with one single example.

5       Asked, if upon leaving, whether she told anybody the  
6 reasons that -- she said she told Jacqueline Draper, and  
7 nothing was done, but she admitted -- we said, "Well, when you  
8 left, did you tell Ms. Draper it was because you didn't agree  
9 with her leadership?"

10       And she said, "No. I just thought that that would -- that  
11 would be uncomfortable," because she said she really liked  
12 Jacqueline and that she thought Jacqueline meant well.

13       If you really like someone, and you think that they mean  
14 well, wouldn't you have the honesty to tell them why you were  
15 leaving?

16       Sharon Arnold said the same thing. No one said anything  
17 to her.

18       There's no evidence that she called the anonymous tip  
19 line. There's no evidence she went to some other manager to  
20 raise her concerns. There's simply no evidence that she told  
21 them why she was leaving.

22       She wants you to believe that she left the job she loved  
23 due to her concerns but didn't tell a single person at her exit  
24 from the company.

25       There is a term of art in this industry, and it's called a

1 "legitimate dispute." It describes disputes like we have every  
2 single day, and you only need your common sense. It's the type  
3 of a disagreement that is typical or people look at the same  
4 things and see things differently. Those are bona fide  
5 disputes.

6 You heard from Mr. Bates and even Mr. Marks that there can  
7 be disagreements without bad faith.

8 The critical question on a bad faith claim is whether you  
9 can find that State Farm had no reasonable basis for its  
10 decision. Even if you disagree -- let's say you decide to  
11 award more money. That's not enough for bad faith.

12 Again, you can just say, "I just think they got it wrong.  
13 We're going to give them more money, but I understand how they  
14 got to their conclusion. We just disagreed with it." That --  
15 that -- that -- that right there is the recognition that all of  
16 you understand that can evidence the fact that you can disagree  
17 with someone but understand how they got to their conclusion  
18 and just not think -- not agree. You see it differently.

19 An insurer can be wrong in their decision without being in  
20 bad faith, again, as long as they had a reasonable basis.  
21 State Farm's claim handling need not be perfect in order for  
22 you to find that they were in bad faith. It just had to be  
23 reasonable. There's perfect -- perfection's nowhere in the  
24 word.

25 Let's take a look at that verdict form on bad faith, and,

1 if you agree, if they have not proven, if you are unable to  
2 look your fellow juror in the eye and say that they had no  
3 reasonable basis for doing what they did, we're asking you to  
4 check B, that there was no bad faith.

5 Again, not so arrogant to think that you might not  
6 disagree; but, if you do, you got to look at the instruction on  
7 bad faith damages; and, as Mr. Miller showed you, you've got  
8 two things you can consider:

9 The financial loss, primarily, that's going to be what  
10 you -- what, if anything, if you found for them on the breach  
11 of contract, that you thought was still owed under this policy.  
12 That's the financial loss.

13 The second part is mental pain and suffering, and, on that  
14 one, you really should consider the evidence or the lack of  
15 evidence -- of any evidence that there was any actual mental  
16 pain and suffering experienced by Mr. Bates who said he wasn't  
17 very involved, said he was glad Gary was there.

18 The only real evidence, if you can call it that and you  
19 heard, was that Mr. Gary Bates said that he got fidgety and  
20 sometimes, I think, became agitated when they were talking  
21 about this insurance claim; but, again, there, that's simply --  
22 all you've got is what Mr. Gary Bates is perceiving in somebody  
23 else's mannerisms.

24 I could be trying to read the jury, and I could be  
25 completely misreading your mannerisms if I don't know what you

1 had to say on that issue, and you didn't hear anything because  
2 he wasn't involved, and that's okay. It's okay for Gary to  
3 help him out, but Gary's not a plaintiff, and any frustration  
4 he felt is not compensable.

5 The last thing that you're going to have to decide is that  
6 issue of punitive damages, and that's the one where that clear  
7 and convincing standard, that "highly probable and free from  
8 doubt" standard applies.

9 The reckless disregard, State Farm submits that the  
10 evidence here does not even support a finding that there was  
11 bad faith; and, even if you disagree, you still don't have to  
12 award damages to punish. You've got to consider all the  
13 evidence of what was done well, what could have been done  
14 better, and what may have been done wrong.

15 The second and last part -- which, again, you don't have  
16 to check any of those boxes. In fact, if you found in favor of  
17 State Farm, your -- your work is done. You don't have to check  
18 any of these boxes.

19 But there's that second one that talks about malice, which  
20 involves hatred, spite, and ill will. There is no evidence of  
21 that in this case, not from Ms. Jacome, the former foster child  
22 who was trying to get this right, who said she would have paid  
23 the claim if she -- there's simply no evidence of malice,  
24 unless you're looking at some of the nasty emails that were  
25 sent to State Farm.

1 "Considering all of the evidence" means considering  
2 Ms. Jacome's complete inspection.

3 It means considering State Farm's timely handling of this  
4 claim and the timely payment of the amounts that they knew that  
5 they owed.

6 It means considering the claim, and the photos were  
7 considered not just by Ms. Jacome but by her supervisor.

8 It's considering that having someone available to an  
9 inexperienced person to help them and coach them should be  
10 encouraged in this world, not punished.

11 That's what it means to consider all of the evidence.

12 We're asking you to find in favor of State Farm and say  
13 that there was no conduct here that is in need of punishment.

14 Further, as that instruction says, if you check "yes" on  
15 punitive damages, we will continue to the next phase of the  
16 case where you will have an opportunity to hear additional  
17 evidence and testimony.

18 The physical evidence in this case tells a story, and it  
19 does not support the claims made by the plaintiffs.

20 This case presents a question of what is or what is not  
21 covered, nothing more.

22 Ladies and gentlemen, thank you for your time and  
23 attention.

24 THE COURT: Thank you, Mr. Leffel.

25 Mr. Miller, you have 10 minutes in rebuttal.

1 MR. MILLER: Well, don't have much time to talk about  
2 all that, but there is a big difference between trying to read  
3 a jury of people you don't know and reading your daddy for --  
4 of 67 years, and Mr. Gary Bates -- he didn't oversell it. He  
5 didn't overstate it. He just said the things that he saw when  
6 they would talk about this.

7 And you noticed that his dad said, "I'd have to ask him."

8 He didn't -- he wasn't trying to talk to anybody. He  
9 wasn't trying to upset him.

10 Mr. Bates made it clear in his emails several times, but,  
11 for example -- if you could put up the one right there.

12 You know, he -- he's trying to tell them in real time that  
13 his 96-year-old dad is confused and upset over this matter.

14 They knew what they were dealing with the entire time that  
15 we were involved in this.

16 And this whole "right to be wrong" thing?

17 I don't know where he read that. All they got to do is  
18 admit it. If they would have admitted this, they would have  
19 never got sued.

20 "We'll go back out. Let us look again."

21 They had every reason to know that that was necessary.

22 You know, they said something about Swain being hired --  
23 or not -- Corbin Swain was never hired. That's what Marks told  
24 you, and it's absolutely the facts, and the reason is -- and  
25 you heard it.

1           When Gary talked to Jacome on the phone, she said, "If you  
2           hire an engineer, we'll hire an engineer," more like a threat;  
3           and if you don't think it was a threat, don't forget that long  
4           15 -- I don't know -- 10 minutes -- seemed like forever --  
5           where she's talking about she doesn't want to look bad. She  
6           doesn't want another inspection. That will make her look bad.  
7           State Farm's going to care about that.

8           I can't even remember all the things she said, but the  
9           bottom line is does anybody care about the insured?

10          It feels like all they care about is themselves at that  
11          place.

12          They've had the Corbin Swain photos for months and months  
13          and months. They had them at the time of the depo of  
14          Mr. VanDorn. They had them before he wrote his report.  
15          They've had those. They're paying parts of things and not all  
16          the things.

17          All they had to do was stand up and admit they'd made a  
18          mistake. They still haven't done that. Right now they haven't  
19          done that. What's it going to take to get them to do that?

20          And, yeah, I will say it for sure ahead of all the rest of  
21          the people that testified from their side: I don't think the  
22          truth is in Ms. Draper.

23          I don't know what her life was. I don't care. I know  
24          what it is now. I'm not sure she has the capacity to recognize  
25          it.

1 The most expedient testifier I've ever seen. She says  
2 whatever helps her at the moment. We had to stop the whole  
3 first depo because she claimed that the 2012 claim pictures  
4 showed that they never replaced any of the metal up there and  
5 then realized that we didn't have any of that. She'd been  
6 looking, doing her own little research; and then, when we get  
7 it all, she has to admit that she was completely wrong. I  
8 doubt that she ever looked in the first place.

9 Never said she was the mastermind. Never said that. She  
10 was running out front because she was willing.

11 We never could dig out of them who the mastermind was. No  
12 telling how many layers up that is.

13 There's a few things that I suggest to you that tell you  
14 the story about inside of that place. You've seen every one of  
15 them:

16 First, look what they said to the OID. They sent to the  
17 OID, the insurance department -- they sent to them only what  
18 they wanted them to see.

19 The thing they didn't send was Marks's pictures, and what  
20 result of that?

21 The OID said, "You may have to go to court."

22 Lookee what they said to the Better Business Bureau.  
23 Jacqueline Draper wrote this one. She literally said to the  
24 Better Business Bureau, "We have reached a satisfactory  
25 resolution."

1 That was sent when Mr. Bates is sending all the emails  
2 before and after.

3 Is anybody listening?

4 Does anybody care?

5 Is anybody concerned?

6 Nobody got back with him about that.

7 He wanted to talk to management, supervisor's super- --  
8 nobody.

9 Arnold said Draper should have called.

10 Draper said somebody in -- below her should have called.

11 It's the biggest "pass the buck" deal I ever saw, but you  
12 saw the biggest part of that today, I suggest: the 2012 claim  
13 file right slope dodge. They were real proud of that one  
14 because it proved the theory. Little problem was -- and I  
15 guess they didn't think we'd look -- the rest of the roof  
16 showed exactly what happened in our case. You know why?

17 Because edges are more susceptible to hail damage. Their  
18 own training folks tell them that. Their captive training  
19 company, HAAG, tells them that.

20 I don't reckon there's really anything else to say,  
21 truthfully. You either see it our way, or you don't. I get  
22 it. That's why you're here. We had to have you. We couldn't  
23 resolve it otherwise.

24 But, if you do see it our way, I'd just ask you to fully  
25 explore -- and I don't even have to ask you because you will --

1 what is Mr. Gary -- excuse me -- Thomas Bates's time, his peace  
2 of mind, his right to not be confused and upset -- what is the  
3 real value of that after all he's done and been through?

4 I appreciate you, at the end, very much and for your  
5 attention and your time. Thank you.

6 THE COURT: Thank you, Mr. Miller.

7 (End of excerpt.)

8 REPORTER'S CERTIFICATE

9 I, CASSY KERR, Federal Official Court Reporter in and for  
10 the United States District Court for the Western District of  
11 Oklahoma, do hereby certify that, pursuant to Title 28, Section  
12 753, United States Code, the foregoing is a true and correct  
13 transcript of the stenographically reported proceedings held in  
14 the above-entitled matter, and the transcript page format is in  
15 conformance with the regulations of the Judicial Conference of  
16 the United States.

17 DATED THIS 5th day of November, 2024.

18 /s/Cassy Kerr  
19 Cassy Kerr, CSR, CCR, RPR, CRR, CRC  
20 Oklahoma CSR License No. 1367  
21 Federal Official Court Reporter  
22  
23  
24  
25