UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, OWENSBORO DIVISION

Val Smith and Gwen Smith v. American Strategic Insurance Corp.

No. 4:24-cv-0079-RGJ (W.D. Ky. June 18, 2026) · No. 4:24-cv-0079-RGJ · Decided June 18, 2026

SUMMARY

The United States District Court for the Western District of Kentucky addresses an insurer's motion for summary judgment and the parties' motions to exclude expert testimony in a dispute involving alleged mine-subsidence damage. The court denies the expert-exclusion motions, grants summary judgment in part, and denies it in part. The opinion analyzes expert disclosure requirements under Federal Rule of Civil Procedure 26, admissibility under Federal Rule of Evidence 702, and claims for breach of contract, statutory bad faith, common-law bad faith, negligence, and related statutory violations.

CASE DETAILS

COURT	United States District Court for the Western District of Kentucky, Owensboro Division
WRITING FOR THE COURT	Rebecca Grady Jennings
JURISDICTION	United States District Court for the Western District of Kentucky, Owensboro Division
DECIDED	June 18, 2026
DOCKET	4:24-cv-0079-RGJ
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs asserted breach-of-contract, insurance bad-faith, statutory unfair-claims-settlement, negligence, and related statutory claims arising from the denial of a mine-subsidence insurance claim. Defendant moved for summary judgment, and both parties moved to exclude opposing expert testimony under Federal Rules of Evidence 702 and 703 and Federal Rule of Civil Procedure 26.
STANDARD OF REVIEW	Summary judgment is proper when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law; the evidence is viewed in the light most favorable to the nonmoving party. Evidentiary rulings under Rule 702 are reviewed for abuse of discretion.

PRECEDENTIAL VALUE	unpublished, nonprecedential federal district-court opinion
PARTIES	Val Smith, Gwen Smith v. American Strategic Insurance Corp.

TOPICS

insurance coverage · insurance bad faith · summary judgment · expert testimony · daubert standard

PRACTICE AREAS

insurance coverage · insurance bad faith · expert evidence · civil procedure · breach of contract

QUESTIONS PRESENTED

1. Whether the parties' proposed expert testimony satisfied the qualification, relevance, reliability, disclosure, and supplementation requirements of Federal Rules of Evidence 702 and 703 and Federal Rules of Civil Procedure 26 and 37.
2. Whether a genuine dispute existed as to whether mine subsidence caused covered damage to the property during the ASIC policy period.
3. Whether the policy's existing-damages exclusion, anti-concurrent-causation clause, loss-in-progress doctrine, or concealment-or-fraud provision barred the breach-of-contract claim as a matter of law.
4. Whether plaintiffs presented sufficient evidence that ASIC lacked a reasonable basis for denying the claim and acted knowingly or recklessly, as required for common-law and statutory bad faith.

HOLDINGS

1. Gaston may testify because his deposition testimony and disclosed materials were within the scope of the opinions in his reports, the late disclosure was harmless under the applicable Rule 37 factors, and his reliance on visual inspection, core samples, mine maps, and professional experience supplied a sufficiently reliable and relevant foundation.
2. Garrigan may testify regarding the estimated cost of repairing the property because his extensive residential-construction experience qualified him to provide a repair estimate, and his reliance on a visual inspection, construction experience, building-code knowledge, and Gaston's causation opinions was sufficiently reliable.
3. Meeks was qualified to testify regarding subsurface conditions and mine-subsidence causation, and his opinions were sufficiently reliable despite plaintiffs' disagreement with his reliance on standard penetration testing and his treatment of contrary evidence.
4. Smith was qualified to testify as a structural engineer regarding structural movement and damage attributable to soil behavior and construction-related issues, but he could not independently opine on the existence or cause of coal mine subsidence beyond relying on Meeks's geological analysis.
5. Summary judgment was inappropriate on the breach-of-contract claim because a reasonable jury could find that mine subsidence caused covered damage during the policy period, and the policy's existing-

damages exclusion did not clearly exclude ongoing damage merely because the underlying cause predated policy inception.

6. ASIC was entitled to summary judgment on plaintiffs' common-law bad-faith and UCSPA claims because plaintiffs failed to produce evidence that ASIC lacked a reasonable basis for denying the claim or acted with intentional misconduct or reckless disregard.

KEY QUOTATIONS

> *"Gaston's testimony does address the threshold issue of whether the damage to the Property is of the type that the Policy covers—i.e., whether it was caused by mine subsidence or other excluded causes, such as earth movement."* (at 15)

> *"Accordingly, the Policy does not exclude damages from mine subsidence occurring during the Policy period."* (at 29)

> *"Accordingly, Plaintiffs' bad faith claims fail as a matter of law and ASIC's motion for summary judgment [DE 36] is GRANTED in part and DENIED in part, consistent with this opinion."* (at 35)

FACTUAL BACKGROUND

The Smiths purchased a Kentucky home in 2017 after an inspection documented substantial cracking and other deficiencies. Their prior insurer, Kentucky Farm Bureau, investigated and attributed the damage to natural soil movement, while ASIC later denied a 2021 mine-subsidence claim based on NV5's contrary investigation. Kentucky's Division of Abandoned Mine Lands later funded and conducted a roughly $1.8 million subsidence-reclamation project at the property, but ASIC reaffirmed its denial after reviewing additional AML materials.

PROCEDURAL HISTORY

Plaintiffs filed suit against American Strategic Insurance Corp. after ASIC denied their claim for property damage allegedly caused by coal mine subsidence. ASIC moved for summary judgment on all claims, while the parties filed competing motions to exclude expert testimony. The court denied all three motions to exclude, granted summary judgment on the UCSPA, common-law bad-faith, and Kentucky Revised Statutes section 304.12-235 claims, and denied summary judgment on the breach-of-contract claim.

DISPOSITION

other

CASES CITED

- Conwood Co. v. U.S. Tobacco Co., 290 F.3d 768 (6th Cir. 2002)
- Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999)
- Burgett v. Troy-Bilt LLC, 579 F. App'x 372 (6th Cir. 2014)
- In re Scrap Metal Antitrust Litigation, 527 F.3d 517 (6th Cir. 2008)
- Berry v. City of Detroit, 25 F.3d 1342 (6th Cir. 1994)

- Mannino v. International Manufacturing Co., 650 F.2d 846 (6th Cir. 1981)
- First Tennessee Bank National Ass'n v. Barreto, 268 F.3d 319 (6th Cir. 2001)
- Hardyman v. Norfolk & Western Railway Co., 243 F.3d 255 (6th Cir. 2001)
- Brainard v. American Skandia Life Assurance Corp., 432 F.3d 655 (6th Cir. 2005)
- R.C. Olmstead, Inc. v. CU Interface, LLC, 606 F.3d 262 (6th Cir. 2010)
- Thompson v. Doane Pet Care Co., 470 F.3d 1201 (6th Cir. 2006)
- Marathon Petroleum Co. LP v. Midwest Marine, Inc., 2012 WL 6632474 (E.D. Mich. Dec. 17, 2012)
- Howe v. City of Akron, 801 F.3d 718 (6th Cir. 2015)
- James River Casualty Co. v. UniControl, Inc., 2023 WL 4543487 (6th Cir. July 14, 2023)
- Wittmer v. Jones, 864 S.W.2d 885 (Ky. 1993)
- Farmland Mutual Insurance Co. v. Johnson, 36 S.W.3d 368 (Ky. 2000)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)
- Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
- Sagan v. United States, 342 F.3d 493 (6th Cir. 2003)

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