UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TOUCHMARK HOTEL GROUP, LLC d/b/a HOLIDAY INN EXPRESS,

Plaintiff,

1:24-CV- 6744 (PKC)

-against-

MT. HAWLEY INSURANCE COMPANY,

Defendant.

MEMORANDUM IN SUPPORT OF DEFENDANT MT. HAWLEY INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT

Respectfully submitted,

/s/ Greg K. Winslett

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ATTORNEYS FOR DEFENDANT MT. HAWLEY INSURANCE COMPANY

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I. INTRODUCTION

Defendant Mt. Hawley Insurance Company ("Mt. Hawley") submits this Memorandum of Law pursuant to Federal Rule of Civil Procedure 56 seeking summary judgment on all claims asserted by Plaintiff Touchmark Hotel Group, LLC ("Plaintiff" or "Touchmark").

This is a first-party property insurance coverage lawsuit concerning a claim for damage to Plaintiff's Holiday Inn Express in Jacksonville, Florida (the "Property" or "hotel"), purportedly caused by a windstorm on January 4, 2023 (the "Claim"). On the date of the alleged storm, the Property was insured under a commercial property policy issued by Mt. Hawley to Plaintiff (the "Policy"). The Policy contains a New York choice of law clause which provides: "**All matters arising out of or relating to this Policy shall be determined in accordance with the law and practice of the State of New York**." All claims and defenses in this lawsuit are therefore governed by New York law, and this exact same New York choice of law provision has been consistently enforced in this District.

Summary judgment in favor of Mt. Hawley is warranted on separate and independent grounds. First, the Claim was not reported to Mt. Hawley until June 22, 2023, over six months after the storm, in direct violation of conditions to coverage under the Policy requiring "prompt notice" of loss or damage to the Property. For that reason alone, Plaintiff's claim for breach of the Policy fails as a matter of New York law. Separate and apart from its late notice, Plaintiff violated another express coverage condition in the Policy by misrepresenting the actual cost to replace the Property's roof in a sworn proof of loss submitted to Mt. Hawley before this lawsuit was filed. Plaintiff's claim for breach of the Policy also fails as a matter of New York law for this independent reason.

Finally, Plaintiff's Florida-based claims for court costs, expert fees, and attorney's fees should be dismissed as they are not cognizable under New York law.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. The Policy

Mt. Hawley issued Commercial Property Policy No. MPC0604887 to Plaintiff with a policy period from December 22, 2022 to January 22, 2024 (the "Policy") insuring commercial property located at 10148 New Berlin Road in Jacksonville, Florida (the "Property"). (Mt. Hawley's LCR 56.1 Statement of Undisputed Material Facts, hereinafter "SOF", ¶ 1). The limit of insurance for Building coverage is $5,000,000. (SOF ¶ 1). The Policy contains the following New York forum-selection and choice-of-law provisions:

> **LEGAL ACTION CONDITIONS ENDORSEMENT**
>
> This endorsement adds the following to LEGAL ACTION AGAINST US elsewhere in the Policy:
>
> > All matters arising hereunder including questions related to the validity, interpretation, performance and enforcement of this Policy **shall be determined in accordance with the law and practice of the State of New York** (notwithstanding New York's conflicts of law rules).
> >
> > It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, any Named Insured, any additional insured, and any beneficiary hereunder shall submit to the jurisdiction of a court of competent jurisdiction in the State of New York, and shall comply with all the requirements necessary to give such court jurisdiction. Any litigation commenced by any Named Insured, any additional insured, or any beneficiary hereunder against the Company shall be initiated in New York. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.

(SOF ¶ 2). The Policy contains the following conditions to coverage:

> **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**
>
> . . .
>
> **E. Loss Conditions**
>
> The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.
>
> . . .
>
> **3. Duties In The Event Of Loss Or Damage**

a. You must see that the following are done in the event of loss or damage to Covered Property:

(2) **Give us prompt notice of the loss or damage**. Include a description of the property involved.

(SOF ¶ 3).

***

WINDSTORM OR HAIL LOSS REPORTING LIMITATION ADDENDUM

Regardless of anything to the contrary in the policy to which this endorsement is attached, the following limitations apply in reference to reporting of claims under this policy:

With respect to loss or damage caused by windstorm or hail, including any named storm, **you must give us prompt notice of the loss or damage** and include a description of the property involved, and as soon as possible give us a description of how, when and where the loss or damage occurred. In no event may a claim be filed with us later than one year after the date of the loss or damage that is the subject of the claim.

(SOF ¶ 3).

***

COMMERCIAL PROPERTY CONDITIONS

This Policy is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Policy is void and there is no coverage for any claim in any case of fraud by you as it relates to this Coverage, at any time. It is also void if you or any other insured, at any time, conceals or misrepresents a material fact concerning this Policy, the Covered Property, or your interest in the Covered Property.

There is no coverage for any claim under this Policy if, at any time and regardless of intent, you or any other insured or any representative acting on your or any insured's behalf provide incorrect, false, inaccurate, or incomplete information in connection with any claim under this Policy.

There is no coverage for any claim under this Policy if, at any time and regardless of intent, you do not promptly, and prior to a loss, provide us notice in writing of a material change in any risk insured under this Policy which is relevant to the loss.

(SOF ¶ 5).

B. Plaintiff's Late Notice

In its Second Amended Complaint, Plaintiff alleges that the Property was damaged by a storm on or about January 4, 2023. (SOF ¶ 6). Plaintiff asserts a single cause of action for breach of the Policy. (SOF ¶ 6). Plaintiff also seeks recovery of court costs, expert fees, and attorney's fees under certain Florida statutes. (SOF ¶ 6).

Plaintiff's owner and 30(b)(6) corporate representative, Rick Patel, testified that the hotel manager who was present at the Property on January 4, 2023, advised him the next day (January 5, 2023) of roof damage to the Property. (SOF ¶ 7). Specifically, Patel testified that he was told about shingles being detached by wind during the storm and blown into the hotel parking lot. (SOF ¶ 8). Patel testified that the reason he did not report the roof damage to Mt. Hawley at that time was because neither he nor his manager saw any "visual leaks." (SOF ¶ 9). Patel testified that neither he nor his employees "took the damage seriously" at the time because he was not sure whether it was enough damage to result in an insurance claim. (SOF ¶ 10).

Plaintiff did not report the claim until June 22, 2023, over six months after the loss. (SOF ¶ 11). Plaintiff initially claimed the date of loss was April 26, 2023 (not January 4, 2023). (SOF ¶ 12). On that date, Plaintiff's insurance agent, The Insurance Center, sent a "Property Loss Notice" to the broker listed on the Policy, Element22 Insurance Services, who emailed the notice to Mt. Hawley's "New Claim" email address. (SOF ¶ 13). The "Property Loss Notice" erroneously listed the date of loss as April 26, 2023. (SOF ¶ 14). This June 22, 2023 email was the first notice provided to Mt. Hawley of Plaintiff's claimed loss or damage to the Property. (SOF ¶ 15).

Mt. Hawley investigated the claim (which was assigned Claim No. 526755) and provided its claim decision by letter to the insured's owner and representative, Rick Patel, on September 6, 2023. (SOF ¶ 16). In that letter, Mt. Hawley explained that the date of loss reported by the insured

was April 26, 2023, and Mt. Hawley received notice of the loss on June 22, 2023. (SOF ¶ 17). The letter explained that there was no coverage for the loss based on the findings of its retained engineer, Mitchell Shaneberger of Stephens Engineering, who concluded in his report that there was no damage to the Property caused by wind. (SOF ¶ 18). The letter also specifically explained that Mt. Hawley was not waiving its rights to assert any and all other available defenses under the Policy. (SOF ¶ 19).

C. Plaintiff's Fraudulent Proof of Loss

Six months later, on March 8, 2024, Plaintiff's counsel sent Mt. Hawley a pre-suit demand letter for the same claim (Claim Number 526755) asserting that the claimed damage was actually caused by a storm on January 4, 2023 (not April 26, 2023, as the insured originally reported). (SOF ¶ 20). Attached to the demand letter was a sworn proof of loss signed by Plaintiff quantifying the claimed damage to the hotel as $805,258.91. (SOF ¶ 21). The sworn proof of loss references and incorporates two estimates, the RCC estimate and a PuroClean restoration estimate, the sum total of which amount to exactly $805,258.91. (SOF ¶ 22). The RCC estimate includes a roof replacement cost of $266,761.62 to replace the hotel's roofs. (SOF ¶ 23).

Unbeknownst to Mt. Hawley, at the time the sworn proof of loss was signed and submitted, Plaintiff's owner and 30(b)(6) corporate representative (Rick Patel) had already accepted a bid to have the roof replaced for a fraction of the roof replacement cost contained in his sworn proof. (SOF ¶ 24). While the Policy clearly states that Plaintiff's intent is not relevant to this coverage condition, the discovery in this case demonstrates that this was obviously done to fraudulently induce Mt. Hawley to overpay an inflated amount for roof replacement.

Many months earlier, in November 2023, Plaintiff's local insurance agent, The Insurance Center ("TIC"), was searching for new coverage for the Property. As part of those efforts, TIC emailed RT Specialty (an insurance broker) a copy of a $75,000 bid from Coastal Roofing to

replace the hotel's roofs for which Patel had already made a down payment of $40,000 on September 27, 2023. (SOF ¶ 26). A copy of the $40,000 check to Coastal Roofing is attached hereto. (SOF ¶ 25). During the claims adjustment process, Plaintiff never disclosed these efforts to replace the roof. (*See* SOF ¶ 27).

At his deposition in December 2024, Patel admitted for the first time that the roof had been completely replaced.[1] (*See* SOF ¶ 27). In its initial Rule 26 disclosures served on November 8, 2024—long after the roof had already been replaced—Plaintiff still claimed $805,258.91 of building damages (the same amount stated in its fraudulent proof of loss). (SOF ¶ 29). Plaintiff did not even disclose Coastal Roofing as persons with knowledge. (SOF ¶ 30).

III. APPLICABLE LEGAL STANDARD

A. Summary Judgment Standard

Under Rule 56(a) of the Federal Rules of Civil Procedure, summary judgment is required when "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." FRCP 56(a). To avoid summary judgment, the non-moving party may not simply rest upon conclusory allegations or denials; rather, it bears the burden of providing evidence of each essential element of its claim to show that a reasonable jury could find in its favor. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Disputes regarding a fact issue that is irrelevant or unnecessary are insufficient, as is a mere scintilla of evidence that is colorable or not significantly probative. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). "Summary judgment is particularly appropriate in resolving insurance coverage disputes, because the interpretation of an insurance policy presents a question of law." *Folksamerica Reinsurance Co. v. Republic Ins. Co.*, No. 03 CIV. 6608 (VM), 2004 WL 1043086, at *2 (S.D.N.Y. May 6, 2004)

[1] Plaintiff paid $106,692.47 to replace the roofs, including $80,000 paid directly to Coastal. (SOF ¶ 28).

(quoting *Constitution Reins. Corp.* v. *Stonewall Ins. Co.*, 980 F.Supp. 124, 127 (S.D.N.Y. 1997), aff'd without opinion, 182 F.3d 899 (2d Cir. 1999) (citation omitted).

IV. ARGUMENT AND AUTHORITIES

A. New York law governs all claims and defenses.

New York law governs all parties' claims and defenses in this case pursuant to the New York choice-of-law provision in the Policy's Service of Suit and Commercial Property Conditions Endorsement, which states: "All matters arising hereunder including questions related to the validity, interpretation, performance and enforcement of this Policy **shall be determined in accordance with the law and practice of the State of New York** (notwithstanding New York's conflicts of law rules)." (Emphasis added).

As a federal court sitting in New York, this Court applies New York's choice of law rules—even when the action before this court has been transferred from a federal court in another state. *See Klaxon Co. v Stentor Elec. Mfg. Co.,* 313 US 487, 496 (1941); *In re Coudert Bros. LLP,* 673 F3d 180, 186 (2d Cir 2012); *Atl. Marine Const. Co., Inc. v U.S. Dist. Ct. for W. Dist. of Tex.,* 571 US 49, 64-66 (2013). *Esplanade 2018 Partners, LLC v Mt. Hawley Ins. Co.,* No. 23 CIV. 3592 (DEH), 2025 WL 844021, at *4 (SDNY 2025) ("Because this case was transferred to the Southern District of New York pursuant to a valid forum selection clause, see supra Part A, this Court will apply New York choice-of-law principles."); *Ram Krishana, Inc. v Mt. Hawley Ins. Co.,* No. 1:22-CV-03803 (JLR), 2024 WL 1657763, at *3 (SDNY 2024) (same).

New York statutory law and common law each, separately and independently, mandate enforcement of the New York choice of law provision in the Policy. New York General Obligations Law § 5-1401 specifically provides that the parties to a contract involving more than $250,000 "may agree that the law of [New York] shall govern their rights and duties in whole or in part, whether or not such contract . . . bears a reasonable relation to [New York]." Because the

policy limits of the various coverages in the Policy exceed $250,000, Section 5-1401 mandates application of New York law. *See, e.g.*, *AMVS, Inc. v Mt. Hawley Ins. Co.,* No. 22-CV-10782 (ER), 2025 WL 278438, at *3 (SDNY 2025) (holding that § 5-1401 applied to the policy at issue because the insurance limits exceeded $250,000 and, therefore, the New York choice of law clause must be enforced regardless of the lawsuit's connection to New York and without conducting any choice-of-law analysis); *U.S. Rubber Corp. v. Mt. Hawley Ins. Co.*, No. 23 CIV. 7618 (AT), 2024 WL 5268848, at *2 (S.D.N.Y. Dec. 31, 2024) (same); *Esplanade*, 2025 WL 844021, at *5 (same); *HKB Hospitality LLC v. Mt. Hawley Ins. Co.*, No. 23-cv-372, 2024 WL 4349508 (S.D.N.Y. Sept. 30, 2024) (same). This statute effectively ends the choice of law inquiry in this case.

Of course, even separate and apart from the statutory mandate contained in § 5-1401, New York's highest court held in *Ministers & Missionaries Benefit Board v. Snow,* choice of law provisions should be enforced without engaging in any traditional conflicts of law analysis—even when the contract is not subject to Section 5-1401. This holding has been recognized by courts in this District in relation to Mt. Hawley's New York choice-of-law provision. *E.g., Esplanade*, 2025 WL 844021, at *5; *AMVS, Inc.,* 2025 WL 278438, at *3. Thus, New York governs all claims and defenses in this action.

Courts in this District have also repeatedly enforced the same or substantially similar New York choice-of-law provisions in other insurance policies. *See, e.g., Esplanade*, 2025 WL 844021, at *5 ("Multiple recent cases in this District have relied on § 5-1401 and *Ministers* to reach the same conclusion: a New York choice of law clause in an insurance policy must be enforced notwithstanding a statute in the insured's home state voiding such clauses.") (quoting *My Invs. LLC v. Starr Surplus Lines Ins. Co.*, No. 23 Civ. 4229, 2024 WL 4859027, at *3 (S.D.N.Y. Nov. 20, 2024)); *Cajun Conti, LLC v. Starr Surplus Lines Ins. Co.*, No. 23 CIV. 8844 (KPF), 2025 WL

764131, at *4 (S.D.N.Y. Mar. 11, 2025); *AMVS*, 2025 WL 278438, at *3; *U.S. Rubber Corp.*, 2024 WL 5268848, at *2; *HKB Hospitality LLC*, 2024 WL 4349508; *10110 Group, LLC v. Mt. Hawley Ins. Co.*, 2025 WL 415737, *1 (S.D.N.Y. Feb. 6, 2025); *Ram Krishana,* 2024 WL 1657763 at *4.

B. Plaintiff violated the Policy's "prompt notice" requirement.

The Policy plainly requires, as a condition to coverage, that Plaintiff must provide "prompt notice" of any loss or damage. (Policy, Building and Personal Property Coverage Form, E. Loss Conditions, 3. Duties In The Event Of Loss, a.(2). While New York courts have recognized that requirements of "prompt notice" or notice "as soon as possible" may be excused in limited circumstances, no such circumstances are presented here as a matter of law. *See, e.g*., *Sparacino v. Pawtucket Mut. Ins. Co.*, 50 F.3d 141, 143 (2d Cir. 1995). Moreover, New York is clear that no showing of prejudice is required, and the failure to provide prompt notice relieves the insurer of any coverage obligation. *Minasian v. IDS Prop. Casualty Insurance Co*., 676 Fed. Appx. 29, 31 (2d. Cir. 2017); *Menlo Energy Fla., LLC v. Certain Underwriters at Lloyd's London*, 213 A.D.3d 494, 495 (N.Y. App. Div. [First Dep't] 2023).

The standard for evaluating prompt notice is when the circumstances known to the insured would have suggested to a reasonable person the possibility of a claim. *AMVS, Inc. v. Mt. Hawley Ins. Co.*, No. 22-CV-10782 (ER), 2025 WL 278438, at *4 (S.D.N.Y. Jan. 23, 2025) (granting Mt. Hawley's motion for summary judgment because the reporting delay of two months after the storm was unreasonable as a matter of law where the insured testified that he actually observed damage to the property during the storm) (citing *American Home Assur. Co. v. Republic Ins. Co.*, 984 F.2d 76, 78 (2d Cir. 1993) (collecting cases that hold delays ranging from 10 to 53 days unreasonable as a matter of law, thereby discharging the insurer's coverage obligations)).

Here, Plaintiff's delay of 169 days before reporting its claim for wind damage is plainly not "prompt" or excusable as a matter of law. Plaintiff alleges the Property was damaged by a

windstorm on January 4, 2023. Plaintiff's owner and Rule 30(b)(6) corporate representative, Rick Patel, testified that, on January 5, 2023, his property manager told him the hotel had sustained shingle damage to the roof during the storm on January 4, 2023. The only reason Patel offered for the delay in reporting the claim was that he was not sure whether the amount of damage would rise to the level of a claim and did not take the damage "seriously" until he subsequently observed leaks. That purported "excuse" fails under New York law. As noted above, the standard for evaluating whether notice was prompt is when the circumstances known to the insured would have suggested to a reasonable person the possibility of a claim, not when the full nature of the damages is understood. *Hedvat v. Chubb Nat'l Ins. Co.*, No. 24-1194, 2024 WL 4615824, at *2 (2d Cir. Oct. 30, 2024) ("The standard for when an insured must notify their insurer is not when they learn of the full extent of the damages but is instead when they learn that there is any 'reasonable possibility of their policy's involvement.'"); *see also AMVS, Inc. v. Mt. Hawley Ins. Co.*, No. 22-CV-10782 (ER), 2025 WL 278438, at *4 (S.D.N.Y. Jan. 23, 2025) (holding that the insured's representative knew of the possibility of a claim when he first observed damage to the Property caused by the storm on the very same day); *HKB Hospitality LLC v. Mt. Hawley Ins. Co.*, No. 23 Civ. 372 (JPO), 2024 WL 4349508 (S.D.N.Y. Sept. 30, 2024) (same).

C. Plaintiff violated the Policy's "Concealment, Misrepresentation or Fraud" provision.

"Under New York law, a written contract is to be interpreted so as to give effect to the intention of the parties as expressed in the unequivocal language they have employed." *Terwilliger v. Terwilliger*, 206 F.3d 240, 245 (2d Cir. 2000)). The Policy provision at issue provides: "There is no coverage for any claim under this Policy if, at any time and regardless of intent, you or any other insured or any representative acting on your or any insured's behalf provide incorrect, false, inaccurate, or incomplete information in connection with any claim under this Policy." It is important to note that, by the express terms of the provision, no showing of intent to defraud is

required to void coverage if Plaintiff provides false, inaccurate, or incomplete information in connection with the claim. *See Mt. Hawley Ins. Co. v. Beach Cruiser, LLC*, No. 1:22-CV-10354-GHW, 2025 WL 723365, at *1 (S.D.N.Y. Mar. 6, 2025) (enforcing this exact provision in another Mt. Hawley policy and granting summary judgment in favor of Mt. Hawley without any discussion of fraudulent intent).

Courts applying New York law routinely enforce similar policy provisions where, as in this case, the evidence establishes that the insured misrepresented or concealed material facts concerning the value or cause of damage in an insurance claim. *See, e.g., Fernandez v. Philadephia Indem. Ins. Co.*, No. 16 CIV. 2533 (JCM), 2018 WL 502709, at *7 (S.D.N.Y. Jan. 19, 2018) (applying the same standard articulated by the Second Circuit in evaluating a "fraud, misrepresentation, or concealment" provision to determine that the insured had violated the insurance policy's cooperation condition by submitting falsified repair records to establish the value of a stolen automobile); *Clerical Apparel of New York v. Valley Forge Ins. Co.,* 209 F.R.D. 316 (E.D.N.Y. 2002) (granting summary judgment to the insurer on its fraud and concealment defense where the insured made material misrepresentations to the carrier and overestimated the number of items damaged in a fire and burglary); *see also Mon Chong Loong Trading Corp. v. Travelers Excess & Surplus Lines Co.,* No. 12-cv-6509, 2013 WL 3326662 (S.D.N.Y. June 27, 2013) (holding that the policy is not severable, but is totally voided, in the event of concealment or misrepresentation of a material fact). New York law is very clear that false statements in proofs of loss are grounds for voiding coverage. *See Cimato v. State Farm Fire & Cas. Co.,* No. 16-CV-94A(SR), 2020 WL 5260295, at *4 (W.D.N.Y. June 29, 2020) (granting summary judgment in favor of the insurer on its fraud defense because the insured submitted an inflated estimate to

replace damaged personal property and falsely testified in his deposition that he replaced furniture for $15,225 when, in fact, he had purchased replacement furniture for only $4,871.72).

As stated above, unlike the concealment and fraud provisions in these other cases, the provision at issue here explicitly states that no showing of intent to defraud is required to void coverage. Judge Cronan of this District recently enforced this exact provision in another Mt. Hawley policy and granted summary judgment in favor of Mt. Hawley without any discussion of fraudulent intent where the insured made a material misrepresentation in its insurance application. *See Mt. Hawley Ins. Co. v. Beach Cruiser, LLC*, No. 1:22-CV-10354-GHW, 2025 WL 723365, at *1 (S.D.N.Y. Mar. 6, 2025). Of course, even though no showing of intent is required, New York courts have found an insured acted with intent to defraud as a matter of law where evidence of the insured's knowledge of facts undermine his statements to the insurer. *Scott v. AIG Prop. Cas. Co*., 417 F. Supp. 3d 329, 348 (S.D.N.Y. 2019) (compiling cases).

The evidence demonstrates that Plaintiff did, in fact, provide false information to Mt. Hawley in connection with the claim by submitting a sworn proof of loss—signed by Plaintiff—swearing that the roof replacement costs would be $266,761.62. As noted above, the evidence conclusively establishes that, at the time Plaintiff submitted the sworn proof, and unbeknownst to Mt. Hawley, Plaintiff had already accepted a bid and put down a deposit to replace the roof for a fraction of that amount. Plaintiff ultimately paid just over $106,000 to replace the roof, less than half of the sworn repair cost. The evidence is further undisputed that Plaintiff never made any attempt to revise or correct its sworn proof it submitted to Mt. Hawley.

Plaintiff therefore violated the Policy's concealment and fraud provision providing false, inaccurate, and incomplete information concerning the cost to replace the roof. As such, there is no coverage under the Policy, and Plaintiff's claim for breach of the Policy fails as a matter of law.

D. Plaintiffs' Florida-based claim for court costs, expert fees, and attorney's fees fails because it is not cognizable under New York law.

Because New York law, not Florida law, applies to this dispute, Plaintiffs' claims for costs and fees under Florida law fails. *See AMVS, Inc. v. Mt. Hawley Ins. Co.*, No. 22-CV-10782 (ER), 2025 WL 278438, at *6 (S.D.N.Y. Jan. 23, 2025) ("In its complaint, AMVS based its request for attorneys' fees on the Texas Insurance Code. . . . As discussed above, this action is governed by New York law, and thus AMVS' claim for fees under Texas law is unavailing.").

Even under New York law (which Plaintiffs have not even pled), "an insured may not recover the expenses incurred in bringing an affirmative action against an insurer to settle its rights under the policy." *Id.* (quoting *Globecon Group, LLC v. Hartford Fire Ins. Co.*, 434 F.3d 165, 177 (2d Cir. 2006)). New York courts have repeatedly and systematically found that attorney's fees and other litigation expenses are "incidents of litigation" that the prevailing party may not collect "from the loser unless an award is authorized by agreement between the parties or by statute or court rule." *Matter of A.G. Ship Maintenance Corp. v Lezak*, 69 NY2d 1, 5 (1986); *see also Mount Vernon City School Dist. v Nova Cas. Co*., 19 N.Y.3d 28, 39 (2012). The Policy does not obligate Mt. Hawley to reimburse or indemnify Plaintiffs for the attorneys' fees (or any other costs) it incurred in prosecuting this action.

V. CONCLUSION

Summary judgment in favor of Mt. Hawley is warranted because the undisputed facts establish that Plaintiff's claims fail as a matter of law for the reasons set forth above. Defendant Mt. Hawley Insurance Company respectfully requests that the Court grant this motion and dismiss Plaintiff's claims in their entirety with prejudice.

Respectfully submitted,

/s/ Greg K. Winslett
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ATTORNEYS FOR MT. HAWLEY INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2025, a copy of the foregoing was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Greg K. Winslett
Greg K. Winslett