

**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.

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

Respectfully submitted,

/s/ Greg K. Winslett

Greg K. Winslett (*pro hac vice*)

Richard L. Smith, III (*pro hac vice*)

Quilling Selander Lownds Winslett & Moser, PC

2001 Bryan St.

Suite 1800

Dallas, TX 75201

Telephone: (214) 871-2100

Fax: (214) 871-2111

[gwinslett@qslwm.com](mailto:gwinslett@qslwm.com)

[rlsmith@qslwm.com](mailto:rlsmith@qslwm.com)

and

Matthew Kraus

Andrew Furman

Chartwell Law

One Battery Park Plaza, Suite 710

New York, New York 10004

Telephone: (212) 968-2300

Fax: (212) 968-2400

[mkraus@chartwelllaw.com](mailto:mkraus@chartwelllaw.com)

[afurman@chartwelllaw.com](mailto:afurman@chartwelllaw.com)

**ATTORNEYS FOR DEFENDANT MT. HAWLEY  
INSURANCE COMPANY**

Defendant Mt. Hawley Insurance Company (“Mt. Hawley”) submits this Reply Brief supporting its Motion for Summary Judgment (the “Motion”).

As a preliminary matter, Plaintiff concedes that New York law governs this dispute and that its Florida-based claim for court costs, expert fees, and attorney’s fees fails because it is not cognizable under New York law. (*See generally* Memorandum of Law Opposing the Motion, hereinafter “Opposition,” ECF Doc. 81). Plaintiff relies on New York case law throughout its Opposition and does not make any attempt to argue that its Florida based claim for fees and costs is somehow cognizable under New York law (which it is not). Accordingly, Plaintiff’s claim for fees and costs should be dismissed.

**1. Plaintiff failed to provide “prompt notice” of the claimed damage as a matter of law.**

Critically, Plaintiff does not dispute that it was aware of wind damage to the roof in the form of displaced shingles on January 5, 2023—the day after the alleged storm. (Opposition at “Statement of Facts” ¶ 3; Plaintiff’s Statement of Facts, ECF Doc. 82, ¶¶ 6-8). Plaintiff also admits that it did not report the claim until June 22, 2023. (Opposition at “Statement of Facts” ¶ 7; Plaintiff’s Statement of Facts ¶ 11). Instead, Plaintiff suggests that its delay in providing notice of the claim to Mt. Hawley was somehow “excused” because Plaintiff’s corporate representative, Rick Patel, did not know if the observed shingle damage would result in an insurance claim or exceed the Policy deductible. (Opposition at 7). Of course, that does not constitute an “excuse” for late notice as an absolute matter of New York law. As Plaintiff itself acknowledges, the well-recognized standard is whether the damage would suggest the possibility of an insurance claim to a reasonable person, not whether Mr. Patel knew that the observed damage would exceed the Policy deductible. *See 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.’”).

It is not surprising that Plaintiff cannot cite a single case in which an insured’s failure to promptly report a claim has been excused because the insured did not realize the full extent of the damage. That is because Plaintiff’s exact argument has been flatly rejected by this Court in two remarkably similar cases—both of which resulted in summary judgment in favor of Mt. Hawley. In *HKB Hospitality LLC v. Mt. Hawley Ins. Co.*, No. 23 Civ. 372 (JPO), 2024 WL 4349508 (S.D.N.Y. Sept. 30, 2024), Judge Oetken held that the insured was aware of the possibility of the claim (thereby triggering its notice obligation under the Policy) when its representative observed “broken bricks, debris, and lifted shingles” on the same day as the alleged windstorm. Judge Oetken specifically rejected the insured’s proffered “excuse” that it “was waiting to see what insurance it had, what had occurred, and whether there was any damage.” *See id.* at \*4 (“To the extent that HKB had not made a specific assessment of its damages, that does not negate the fact HKB was alerted to ‘the possibility of a claim’ on [the date of the alleged storm], and was required to notify Mt. Hawley within a reasonable time thereafter. . . . HKB lacks a valid excuse for its six-month delay in notice.”). Similarly, in *AMVS, Inc. v. Mt. Hawley Ins. Co.*, No. 22-CV-10782 (ER), 2025 WL 278438, at \*4 (S.D.N.Y. Jan. 23, 2025), Judge Ramos held that the insured’s representative knew of the possibility of a claim (thereby triggering its notice obligation under the policy) when he first observed damage to the Property caused by the storm on the very same day.

Just as the insureds in *AMVS* and *HKB*, Plaintiff’s representatives in this case observed storm damage to the Property in the form of displaced shingles within one day of the storm, alerting Plaintiff to the possibility of a claim and triggering Plaintiff’s notice obligation under the Policy. In fact, Plaintiff specifically admits that, the day after the alleged storm, the hotel’s general

manager (who observed the damage) specifically advised Mr. Patel that the roof shingles were blown into the hotel parking lot during the storm. (SOF, ECF Doc. 77, ¶¶ 7-8; Plaintiff’s Statement of Facts ¶¶ 7-8). Yet Plaintiff delayed over six months before reporting the damage to Mt. Hawley. Plaintiff lacks a valid excuse for its delay, and judgment as a matter of law is warranted.

Of course, even if Plaintiff had not observed any damage to the Property in January 2023, Plaintiff still would have violated the Policy’s prompt notice provision as a matter of law. Without any support or citation to the record whatsoever, Plaintiff states in conclusory fashion that, on May 23, 2023, its employees observed water intrusion and were notified the phone system stopped working. (Opposition, “Statement of Facts” ¶ 7). Yet, even if those conclusory allegations were accurate or adequately supported by non-self-serving deposition testimony, Plaintiff still did not report the claim until June 22, 2023—30 days later. (*Id.*). A delay of 30 days is unreasonable as a matter of law. *See AMVS*, 2025 WL 278438, \*4 (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)).

**2. Plaintiff violated the “Concealment, Misrepresentation, or Fraud” provision.**

Plaintiff admits that at the time the sworn proof of loss was signed and submitted to Mt. Hawley, Plaintiff had accepted a bid and put down a deposit to have the roof replaced for less than half of the roof replacement cost in the sworn proof. (Plaintiff’s Statement of Facts ¶ 24). Plaintiff further admits that it did not tell Mt. Hawley that the roof was being replaced until after the roof replacement was completed. (*Id.* ¶ 27). Plaintiff also admits that its agent submitted the replacement bid to a broker in November 2023 in order to solicit a quote for new insurance for the Property. (*Id.* ¶ 26). Nevertheless, Plaintiff claims it did not violate the Policy’s concealment and fraud provision because the scope of the accepted bid was smaller than the roof replacement in the RCC estimate contained in Plaintiff’s sworn proof loss. That, of course, is totally irrelevant.

The Parties do not dispute that the Policy's concealment and fraud provision states:

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.

The undisputed facts demonstrate that Plaintiff did, in fact, provide inaccurate and incomplete information in its sworn proof by claiming an excessive roof replacement scope that cost more than twice the amount that Plaintiff had already agreed to pay to replace the roof.

Plaintiff attempts to divert focus from this reality by mischaracterizing certain extraneous evidence. Plaintiff's allegation that the Coastal Roofing bid was for "temporary repairs" rather than a roof replacement is totally baseless and unsupported by any evidence. *See Adler v. Penn Credit Corp.*, No. 19-CV-7084 (KMK), 2022 WL 744031, at \*9 (S.D.N.Y. Mar. 11, 2022) ("Moreover, even if Plaintiff's assertions were sufficiently detailed, a non-moving party's self-serving statement, without direct or circumstantial evidence to support the charge, is insufficient to defeat a motion for summary judgment.") (internal quotation marks omitted). Plaintiff cites Mr. Patel's testimony that Coastal Roofing "changed [its] story, [it said] that \$70,000 is for the - not removing the old shingle, just put the new one on top of it." (Patel Depo., ECF Doc. 80-1 at 112:14-16). Even assuming this inadmissible hearsay testimony is accurate (which Mt. Hawley denies), the cost of tearing off and disposing of the old shingles is only \$48,892.72 in the RCC estimate. (See ECF Doc. 79-4 at 5, line item 1). That means the roof replacement cost in the RCC estimate is still more than double the cost of the Coastal Roofing bid even if the tear off cost is removed from the RCC estimate. Plaintiff further states that Coastal Roofing submitted another bid for \$120,000 for the installation of a metal roof which, of course, is totally irrelevant because the Property has a shingle roof. (Opposition at 10-11). Finally, Plaintiff notes that it "signed" a bid from Coastal Roofing dated August 20, 2024, to replace the Property's roof for \$110,000 (still

less than half of the roof replacement cost in Plaintiff's sworn proof). (Opposition at 11). Without any support whatsoever, Plaintiff simply declares that the roof replacement costs were "unascertainable" as of August 20, 2024. At the end of the day, Plaintiff was forced to acknowledge that the final cost of the roof replacement was \$106,692.47—nowhere near the \$266,761.62 replacement cost contained in its sworn proof.

Even accepting all of these red herring facts as true, that does not somehow alter the undisputed evidence that Plaintiff provided inaccurate and incomplete information to Mt. Hawley when it submitted a sworn proof with roof replacement costs more than twice as expensive as the bid it had already accepted to replace the roof, all the while concealing the existence of that bid. Whether the price or scope of the Coastal Roofing bid was later expanded or renegotiated is totally beside the point—Plaintiff violated the express terms of the Policy's concealment and fraud provision by concealing the bid from Mt. Hawley while claiming more than twice the value of the bid in its sworn proof. Therefore, summary judgment in favor of Mt. Hawley is warranted as a matter of law.

As explained in the Motion, the Policy's concealment and fraud provision explicitly states that no showing of intent to defraud is required to void coverage (unlike the provisions in most other cases in this District involving concealment and fraud provisions in insurance policies). *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). However, it is important to note that courts have granted summary judgment in favor of insurers under more stringent fraud provisions requiring a showing of intent to defraud where the insured submitted inflated damage estimates and proofs of loss. *See 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); *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). Once again, Plaintiff fails to cite any case law whatsoever to support its conclusory argument that it did not violate the Policy's concealment and fraud provision.

### 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 and in the Motion. Defendant Mt. Hawley Insurance Company respectfully requests that the Court grant its Motion for Summary Judgment and dismiss Plaintiff's claims in their entirety with prejudice.

Respectfully submitted,

/s/ Greg K. Winslett

Greg K. Winslett (admitted *pro hac vice*)  
Richard L. Smith, III (admitted *pro hac vice*)

QUILLING SELANDER LOWNDS

WINSLETT & MOSER PC

2001 Bryan Street, Suite 1800

Dallas, Texas 75201

(214) 871-2100

(214) 871-2111 (Fax)

[gwinslett@qslwm.com](mailto:gwinslett@qslwm.com)

[rlsmith@qslwm.com](mailto:rlsmith@qslwm.com)

and

Matthew Kraus

Andrew Furman

Chartwell Law

One Battery Park Plaza, Suite 710  
New York, New York 10004  
Telephone: (212) 968-2300  
Fax: (212) 968-2400  
[mkraus@chartwelllaw.com](mailto:mkraus@chartwelllaw.com)  
[afurman@chartwelllaw.com](mailto:afurman@chartwelllaw.com)

**ATTORNEYS FOR MT. HAWLEY  
INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on September 5, 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