UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THE EICHHOLZ LAW FIRM, P.C., on behalf of itself and all others similarly situated, Plaintiff, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant.	Case No. 1:24-cv-03403-TRJ

DEFENDANT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

I. INTRODUCTION

Plaintiff's multiple amendments to the Complaint do nothing to salvage the remaining single count of the Complaint. The issue before the Court remains straightforward—whether Plaintiff's claim against State Farm is barred by the one-year limitations period in Plaintiff's insurance policy. The answer to that question is "yes." Plaintiff does not even try to dispute that it filed the Complaint three years too late. And Georgia law resoundingly honors contractual limitations periods in insurance policies. For this reason, the Court should dismiss Plaintiff's only remaining claim for breach of contract, and it should do so with prejudice.

Plaintiff argues State Farm waived the one-year limitations period in Plaintiff's policy because State Farm has considered settlement negotiations for Plaintiff's ***post-suit* claim**. Opp. at 2–3, 9; SAC ¶ 24. Troublingly, Plaintiff is improperly referring to confidential settlement communications for the potential resolution of this ***litigation***. Plaintiff tries to save its claim by professing there is no difference between (i) State Farm's handling of the underlying **insurance claim**; and (ii) the Parties' ***post*-suit** confidential settlement communications for the potential resolution of this litigation. Opp. at 9. Not so. In truth—for purposes of this Court's waiver analysis—these two could not be more different. It cannot be that negotiating a settlement of the current suit could have impacted Plaintiff's decision whether to timely file suit.

After Plaintiff filed its original Complaint, following a *sua sponte* review, the Court ordered Plaintiff to file an amended Complaint that sufficiently alleged subject matter jurisdiction. ECF No. 32 at 2 n.1. The Court then gave Plaintiff another opportunity to amend its Complaint, concluding that Plaintiff's First Amended Complaint failed to sufficiently allege facts that satisfied the required amount in controversy under the Class Action Fairness Act, and stating that Plaintiff's "Second Amended Complaint should contain facts sufficient to support [Plaintiff's] claim that State Farm waived the contractual one-year filing requirement." *Id*. at 6–7.

Despite having had three bites at the apple, Plaintiff still fails to sufficiently allege that State Farm waived its one-year contractual limitations period. Plaintiff does not allege that, at any point before Plaintiff first filed this lawsuit, State Farm engaged in any negotiations of the ***insurance*** **claim** or did anything else that would constitute a waiver. Plaintiff therefore fails to plausibly allege State Farm waived the contractual limitations provision in the policy.

Unable to distinguish any of the authority State Farm cited in its Motion, Plaintiff plays word games in an attempt to shoehorn the facts of this case into inapplicable authority. Specifically, Plaintiff tries to pass off as analogous cases where courts have found insurers may have waived contractual limitations provisions because the insurers were still negotiating the underlying ***insurance*** **claims** at the time the suit limitation period expired. These cases are not analogous.

Plaintiff acknowledges State Farm had already accepted coverage for Plaintiff's property damage ***insurance* claim** and paid for the auto repairs **years** before Plaintiff filed this lawsuit. SAC ¶¶ 18, 21.

As such, Plaintiff's shell game does not salvage its sole claim, and the Second Amended Complaint against State Farm should be dismissed in its entirety, with prejudice.

II. ARGUMENT

It is undisputed that Plaintiff's only remaining claim for breach of contract was filed nearly three years after the one-year policy limitations period expired. It is further undisputed that Georgia courts consistently enforce one-year limitations provisions in insurance contracts just like the one at issue here. Mot. at 9–12. Plaintiff's only attempt to distinguish this persuasive authority is to argue it was decided at the summary judgment stage. But that attack is misguided because it ignores the several Georgia federal courts that, in the past few years alone, have enforced contractual limitations periods and granted Rule 12(b)(6) motions to dismiss because the claims were time-barred. Mot. at 18.

Despite being afforded multiple opportunities to amend its Complaint, Plaintiff still fails to plausibly allege State Farm waived the one-year limitations period in the policy. Plaintiff's attempt to conflate negotiations of an underlying insurance claim with the Parties' ongoing confidential settlement communications

through their lawyers for the potential resolution of this litigation is disingenuous and does not save Plaintiff's breach of contract claim.

A. The One Year Limitations Period in the Policy Precludes Plaintiff's Only Remaining Claim.

Plaintiff does not even try to dispute that it first filed the Complaint in this case just shy of four years after the date of loss—that is, nearly three years after the one-year limitations period in the policy ran. SAC ¶ 17; ECF No. 1; ECF No. 18-2 at State Farm Car Policy Booklet at 37. Nor does Plaintiff try to dispute that Georgia courts routinely enforce nearly identical limitations periods in insurance contracts. Mot. at 9–10.

Plaintiff does not even mention the two Northern District decisions where Judge Story and Judge Totenberg enforced one-year contractual limitations periods in insurance contracts, dismissed the plaintiffs' claims, and concluded the defendant insurers did not waive the limitations periods, including where the plaintiff alleged insurance claim negotiations took place before the lawsuit. Mot. at 10–12 (citing *Tucker v. State Farm Mut. Auto. Ins. Co.*, 109 F. Supp. 3d 1350, 1352–53 (N.D. Ga. 2015); *Piper v. USAA Cas. Ins. Co.*, No. 1:20-cv-3516-AT, 2022 WL 1691182, *4–5 (N.D. Ga. Feb. 1, 2022)).

Plaintiff's only attempt at distinguishing any of State Farm's cited authority is saying all those cases were adjudicated at the summary judgment stage. Opp. at

10.[1] But any assertion that the application of the Policy's one-year limitations period is best decided at summary judgment, rather than via a motion to dismiss, ignores that dismissal is appropriate where it is "apparent from the face of the complaint that the claim is time-barred." *Porter v. Travelers Home & Marine Ins. Co*., No. 1:22-CV-04049-SCJ, 2022 WL 19976174, at *4 (N.D. Ga. Dec. 13, 2022) (quoting *Gonsalvez v. Celebrity Cruises Inc*., 750 F.3d 1195, 1197 (11th Cir. 2013)). There is no need to wait until summary judgment where, like here, the Second Amended Complaint is bereft of any plausible allegations that State Farm "waived" the policy-imposed limitations period, or that the provision should be tolled or otherwise estopped. *See infra*. § II(B)(1).

In fact, the Northern District granted a motion to dismiss under precisely these circumstances. Mot. at 18 (citing *Porter*, 2022 WL 19976174, at *4). Indeed, in *Porter*, Judge Jones granted the defendant insurer's Rule 12(b)(6) motion to dismiss and enforced the contractual limitations period in the policy, rejecting the plaintiff's only argument for tolling. *Id*. Plaintiff's Opposition also ignores the other Georgia courts that have likewise rejected plaintiffs' arguments that the applicable limitations

[1] Confusingly, Plaintiff contends that State Farm cites case law it did not cite in its now-mooted motion to dismiss. Opp. at 10 n.1; ECF No. 32 at 6. The single case Plaintiff cites, however, is indeed cited in State Farm's original motion to dismiss. ECF No. 18-1 at 10. However, even if Plaintiff had correctly pointed out that State Farm cited case law in its present Motion that was not in the original motion the Court has since mooted, that is of no moment, and not otherwise improper.

period was somehow tolled and instead granted Rule 12(b)(6) motions to dismiss because the claims were time-barred. Mot. at 18.[2] This Court should reach the same conclusion here.

B. Plaintiff Fails to Plausibly Allege State Farm Waived the One-Year Limitations Period in the Policy.

1. The Parties' Confidential Settlement Negotiations to Resolve this Litigation Do Not Waive the One-Year Limitations Period in the Policy.

Plaintiff offers no plausible basis to end-run the unambiguous language in the Policy. Nothing relieves Plaintiff of its burden to allege facts sufficient to "assert any basis for tolling" or waiver of any applicable limitations period. *Porter*, 2022 WL 19976174, at *4; *Vratsinas Constr. Co. v. Triad Drywall, LLC*, 739 S.E.2d 493, 496 (Ga. Ct. App. 2013). And simply, Plaintiff has failed to meet that burden.

Here, Plaintiff argues State Farm waived the one-year limitations period in the policy because the Parties are "still negotiating" Plaintiff's "claim for diminished value." But, this is, at most, a half-truth. In reality, the only claim that is being negotiated is Plaintiff's ***litigation* claim** in the instant lawsuit— which, according to Plaintiff, "remains open to this day." Opp. at 3, 9; SAC ¶ 24. Plaintiff, however, is improperly referring to ongoing confidential settlement negotiations pursuant to

[2] Citing *Lord v. Am. Gen. Life Ins. Co.*, No. 4:21-cv-00031, 2021 WL 2546454, at *5 (S.D. Ga. June 21, 2021); *Smith v. Ga. CVS Pharmacy, LLC*, No. 4:22-cv-65, 2022 U.S. Dist. LEXIS 217669, at *13–25 (S.D. Ga. Nov. 21, 2022).

Federal Rule of Civil Procedure 408 between the Parties' respective attorneys of record in this lawsuit for the potential resolution of this ***litigation***[3]—which did not exist before Plaintiff first filed its untimely Complaint. Mot. at 14; SAC ¶¶ 17, 21. Plaintiff should not be permitted to manufacture a claim of waiver by trying to use this litigation as a shield against the plain application of the Policy's limitations provision. Indeed, if that strategy was a valid one, insureds who had missed a suit limitation period in a policy could resurrect their rights by filing suit—the very thing they are contractually time-barred from doing.

Plaintiff's two other added allegations do nothing to support Plaintiff's waiver theory either. SAC ¶¶ 22–23; Mot. at 13–14; Opp. at 3, 8–9. Indeed, Plaintiff alleges that State Farm "never denied coverage of Plaintiff's claim." SAC ¶ 22. But that allegation attempts to manufacture a factual dispute where there is none; Plaintiff already conceded, and State Farm agrees, that State Farm accepted coverage and paid for repairs. *Id.* ¶¶ 18, 21. That happened well before the one-year suit limitation period expired. *Id.* And Plaintiff's other allegation that State Farm "never indicated to Plaintiff in anyway that a limitation period was approaching and/or ran until after this action was filed" (*id.* ¶ 23) does not support Plaintiff's waiver theory either

[3] To date, despite State Farm's outreach, Plaintiff's improper references to the Parties' confidential settlement communications remain on the public record. ECF No. 23 at 6; SAC ¶ 24; Mot. at 3 n. 1. State Farm reserves the right to move to strike each and every one of these references.

because "[i]t is [] the general rule that the insured is chargeable with knowledge of all the conditions imposed upon him by the terms of his policy." *Tucker*, 109 F. Supp. 3d at 1352. And there is no question that the one-year limitations period is plainly stated in Plaintiff's own Policy Booklet. Ex. A at State Farm Car Policy Booklet at 37.

Plaintiff argues that "[t]here is no difference" between (i) State Farm's offer and payment of Plaintiff's property damage ***insurance* claim**; and (ii) an offer of settlement to resolve Plaintiff's ***post*-suit claim** at issue in this litigation. Opp. at 9. But these two "offers" could not be more different for purposes of this Court's waiver analysis. *Id*. It defies credulity for Plaintiff to contend , and indeed Plaintiff cites no supporting case law, that an offer to settle the litigation that Plaintiff brought years after the contractual limitations period had expired could possibly form the basis for a finding of waiver. Mot. at 14–15. And once State Farm found itself in litigation with Plaintiff, tying State Farm's hands from being able to engage in any settlement conversation for fear of waiving its rights would be against public policy encouraging settlement discussion.

In sum, Plaintiff has established no basis to find waiver or estoppel against State Farm; without such waiver, Plaintiff is left with the clear policy language barring this suit. SAC ¶¶ 41, 44. Plaintiff does not allege that State Farm omitted any necessary information that was not otherwise available to Plaintiff, intentionally

prolonged ***insurance*** **claim** negotiations, or that State Farm did anything else, before the lawsuit was filed, to ostensibly lull Plaintiff into missing the contractual limitations period for bringing this lawsuit. Mot. at 15–16.

2. Plaintiff's Cited Authority is Inapposite.

Tellingly, the case law Plaintiff relies on grapples with a distinguishable scenario. In those cases, the courts found the defendant insurers potentially waived contractual limitations provisions where the insurers had not yet denied liability on the relevant ***insurance*** **claim** and continued negotiating the insurance claim past the contractual limitations period cut-off. Opp. at 7–9. The issue in those cases was not the lack of denial; rather, it was the ongoing dispute as to whether or not coverage existed. But as previously explained, here, State Farm accepted coverage for Plaintiff's property damage ***insurance*** **claim** and paid for the auto repairs. SAC ¶ 18; Opp. at 2. There was no lingering dispute as to the existence of coverage. Plaintiff's cited legal authority is therefore inapposite.

For example, in *JSPS, Inc*., the court concluded the insurer may have waived the one-year-suit limitation because correspondence from the insurer, that predated the lawsuit, indicated the defendant insurer "never denied liability" as to the underlying ***insurance*** **claim** prior to the one-year deadline. *JSPS, Inc. v. First Nonprofit Ins. Co.*, No. 1:20-CV-21 (LAG), 2020 WL 6472678 at *3 (M.D. Ga. Sept. 30, 2020). There, the correspondence from the insurer demonstrated that part of the

insurance claim "remain[ed] open," and the defendant insurer continued to investigate the loss. *Id*. at *2–3.

So too in *Moss*, the court concluded the insurer may have waived the contractual limitation provision because it "engaged in conduct sufficient to lull Plaintiff into **not filing suit** prior to the expiration of the twelve-month limitations period." *Moss v. State Farm Fire & Cas. Co*., No. 7:08-CV-33 (WLS), 2010 WL 11519635, at *5 (M.D. Ga. Mar. 30, 2010) (emphasis added). The court observed that the insurer did not notify the plaintiff that his ***insurance* claim** was denied until well after the limitations period expired and the insurer continued conducting inspections and investigating the insurance claim. *Id*. at *4–5.

Similarly, in *Nee*, a Georgia Court of Appeals case from 1977, the court found the defendant insurer may have waived the contractual limitations period by "never den[ying] liability" for the ***insurance* claim** "until after the suit was filed," but still continually discuss[ing] the loss with its insured with a view toward negotiation and settlement **without the intervention of a suit**." *Nee v. State Farm Fire & Cas. Co*., 236 S.E.2d 880, 881–882 (Ga. Ct. App. 1977) (emphasis added). In deciding, the court considered the insurer's multiple letters discussing settlement of the insurance claim and repair costs, the last of which was sent ten months after the loss, and before the plaintiff filed suit. *Id*.

And in *Pawlowski*, the Georgia Court of Appeals relied on precedent that there

may be waiver where the insurer "continually discussed the loss with its insured with a view toward negotiation . . . **without the intervention of a suit**"—in other words, negotiations of insurance claims that took place before the ***post-suit* claim** was even filed. Opp. at 6–7 (citing *Ga. Farm Bureau Mut. Ins. Co. v. Pawlowski*, 643 S.E.2d 239, 241 (Ga. Ct. App. 2007) (emphasis added)). But the *Pawlowski* court **enforced** the one-year suit limitation in that case, reversed the trial court's judgment, and concluded the insurer was entitled to judgment in its favor, because the insurer implicitly denied liability on the insurance claim prior to the litigation being filed. *Pawlowski*, 643 S.E.2d at 240–42.

These cases all dealt with the insurer's conduct *before* the lawsuits were filed. Opp. at 7–9. The *JSPS, Inc.*, *Moss*, and *Nee* courts concluded the plaintiffs may have been lulled into a belief that the contractual limitations period was waived such that they did not need to file a lawsuit because the ***insurance* claim** itself was still being actively negotiated. This was not true here. Unsurprisingly, Plaintiff does not cite a single case where the court concluded that, like Plaintiff contends here, the defendant insurer waived a contractual limitations provision because, *after* the lawsuit was untimely filed, the attorneys for the parties to the lawsuit engaged in settlement communications for the resolution of the ***post-suit* claim**.

Plaintiff's cited authority has no bearing here. Plaintiff cannot rewrite history and distort the facts to force-fit its argument into a body of case law that has no

relevance to the issues before the Court in an attempt to avoid dismissal.[4]

3. Nothing in the Declaration State Farm Submitted for Purposes of Establishing Subject Matter Jurisdiction Saves Plaintiff's Post-Suit Claim.

Perhaps tacitly recognizing its cited authority is patently distinguishable, Plaintiff, citing a single case, postures that the declaration State Farm submitted for purposes of establishing subject matter jurisdiction, "gives rise to the presumption that" putative class members were not paid enough in diminished value amounts.

[4] Although Plaintiff did not cite these cases, neither is controlling, and both are distinguishable, in the interest of candor to the tribunal, State Farm identifies *Thompson v. State Farm Fire & Cas. Co.*, 264 F. Supp. 3d 1302 (M.D. Ga. 2017) and *Long v. State Farm Fire & Cas. Co.*, 272 F. Supp. 3d 1344 (M.D. Ga. 2017). The cases are readily distinguishable as both cases, filed against a different State Farm entity than Defendant here, involved the alleged diminished value of homes, not autos. *Id*. Second, unlike in the homeowner's context, State Farm does not dispute that in the auto context, it has a "duty to assess [diminished value] even when an insured does not expressly claim diminished value." *Thompson*, 264 F. Supp. 3d at 1324. State Farm acknowledges that, under Georgia law, it is required to calculate the diminished value of damaged vehicles and pay it, where owed, as set forth in *Mabry*. *State Farm Mut. Auto. Ins. Co. v. Mabry*, 556 S.E.2d 114 (Ga. 2001); *Baker v. State Farm Mut. Auto. Ins. Co*., No. 4:19-CV-14 (CDL), 2021 WL 4006124, at *2–3 (M.D. Ga. Sept. 2, 2021), *aff'd*, No. 21-14197, 2022 WL 3452469 (11th Cir. Aug. 18, 2022). Notably, and contrary to the plaintiffs' allegations in *Thompson* and *Long* in the homeowner's context, the plaintiffs in *Baker*, which was another case in the diminished value auto context, did not dispute that State Farm applied the 17(c) formula to assess diminished value in Georgia and Judge Land recognized that State Farm was already regularly paying Georgia insureds diminished value on their vehicles. *Baker*, 2021 WL 4006124, at *2, *8–9. So too here. *See* ECF No. 34-3 (VanDerwerken Decl.) ¶ 7 ("The average diminished value payments in the 33,269 first-party claims for property damage to covered vehicles State Farm adjusted in Georgia during this time period [covering the putative class] was $603.42."). As such, dismissal remains appropriate in this case, and these two cases do not alter the analysis.

Opp. at 10–11; ECF No. 34-3. But Plaintiff's accusation is based on nothing more than dicta in a footnote of a 25-year-old case, citing other cases even a decade older, mostly against other insurers, in other states, listing the diminished value amounts at issue in those particular claims. Opp. at 10–11 (citing *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1272 n.16 (11th Cir. 2000)). Indeed, that court reached no legal conclusion nor made any legal conclusion on the range of diminished value payment amounts that are "typical." Opp. at 10–11. As such, *Morrison* does not control, much less, remotely support the "presumption," which Plaintiff asks the Court to make, that any putative class members were not paid what they are owed, based on the average diminished value payments State Farm made during the putative class period, as set forth in the declaration State Farm submitted for purposes of establishing subject matter jurisdiction. Opp. at 10–11; ECF No. 34-3. Moreover, it is an inferential leap to claim that a declaration stating average diminished value payments made by State Farm in the state of Georgia during the relevant time period somehow gives rise to a presumption that more was owed.

III. CONCLUSION

For the reasons set forth herein and in State Farm's opening brief, the Court should grant this motion and dismiss Plaintiff's only remaining claim against State Farm. Plaintiff's claim is barred by the policy's one-year limitations period and Plaintiff has failed to sufficiently allege waiver. Because there is no reason to further

delay the inevitable, Plaintiff's sole remaining claim should be dismissed with prejudice.

Respectfully submitted, this 27th day of June, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on June 27th, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's CM/ECF system to all counsel of record.

/s/ Melissa G. Quintana
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