

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERSTATE INVESTMENTS, LLC,
Plaintiff,

-v-

MT. HAWLEY INSURANCE
COMPANY,
Defendant.

Civil Action no. 25-cv-8773

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

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INTRODUCTION

Defendant Mt. Hawley Insurance Company (“Mt. Hawley”) brings this motion to dismiss each and every cause of action asserted by Plaintiff Interstate Investments, LLC (“Interstate” or “Plaintiff”) pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. In this first-party insurance coverage dispute, Plaintiff alleges that Mt. Hawley breached its insurance policy by underpaying Plaintiff’s insurance claim for purported storm damage to its commercial properties, and Plaintiff also asserts various extracontractual claims arising from the same alleged conduct. Put simply, all of Plaintiff’s claims fail as a matter of law because Plaintiff violated the two-year suit limitation provision contained in the Mt. Hawley insurance policy applicable to this loss.¹

Despite specifically agreeing to a New York choice of law provision and having full knowledge of the overwhelming body of case law requiring its enforcement, Plaintiff persists in asserting Oklahoma extracontractual claims that are not viable under New York law. As already recognized in at least eight cases in this District (including Your Honor’s decision in *HKB Hospitality LLC v. Mt. Hawley Insurance Company*),² both New York statutory and New York common law mandate the application of New York law to this dispute. Consequently, Plaintiff simply cannot assert *any* plausible claim under Oklahoma law (which, in addition to being barred by the two-year suit limitation, are not cognizable under New York law). Furthermore, Plaintiff’s “alternative” claims for extracontractual relief under New York law (including New York General

¹ The only possible exception is Plaintiff’s claim under New York General Business Law § 349. Even if the Section 349 Claims are not subject to the suit limitations provision (which they clearly are), these claims also fail as a matter of law for the independent reasons discussed herein.

² *Esplanade 2018 Partners, LLC v. Mt. Hawley Ins. Co.*, No. 23 CIV. 3592 (DEH), 2025 WL 844021, at *5 (S.D.N.Y. Mar. 18, 2025); *Summerwind W. Condo. Owners Ass’n Inc. v. Mt. Hawley Ins. Co.*, No. 22 CIV. 3165 (JPC), 2025 WL 691663, at *10 (S.D.N.Y. Mar. 3, 2025); *10110 Group, LLC v. Mt. Hawley Ins. Co.*, No. 23-CV-7179 (JMF), 2025 WL 415737, *1 (S.D.N.Y. Feb. 6, 2025); *AMVS, Inc. v. Mt. Hawley Ins. Co.*, No. 22-CV-10782 (ER), 2025 WL 278438, at *3 (S.D.N.Y. Jan. 23, 2025); *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); *HKB Hospitality LLC v. Mt. Hawley Ins. Co.*, No. 23-cv-372, 2024 WL 4349508 (S.D.N.Y. Sept. 30, 2024); *Ram Krishana, Inc. v. Mt. Hawley Ins. Co.*, No. 1:22-CV-03803, 2024 WL 1657763, at *3-4 (S.D.N.Y. Apr. 17, 2024); *CBKZZ Inv. LLC v. Renaissance Re Syndicate 1458 Lloyds*, No. 22-CV-10672 (AS), 2024 WL 728890, at *2 (S.D.N.Y. Feb. 22, 2024).

Business Law § 349, consequential damages, and attorney fees) likewise fail to state a viable claim under New York law (in addition to being barred by the Policy’s two-year suit limitation). Accordingly, this entire lawsuit should be dismissed with prejudice.

FACTUAL BACKGROUND

I. The Policy

Mt. Hawley Commercial Property Policy number MCP0174111 (the “Policy”), effective January 21, 2023 through January 21, 2024, insured Plaintiff’s Oklahoma hotel properties at the time of this loss. (ECF 1-2, “Complaint,” ¶ 1). Plaintiff filed a certified copy of the Policy with its Complaint. (ECF 1-2 at Pages 23-108 of 108), and the Policy is further authenticated by the Declaration of Adam Kotara [“Kotara Dec.”], which is annexed to Mt. Hawley’s Notice of Motion filed contemporaneously herewith. The Policy includes a total coverage limit of \$31,000,000, with a \$26,100,000 limit for building coverage. (Complaint at Pages 26-27 of 108). This Policy Plaintiff elected to purchase contains an endorsement titled “Legal Action Conditions Endorsement,” which includes the following New York choice of law provision and New York forum selection clause:

In the event of any litigation involving any matter arising out of or relating to this Policy, it is agreed that any Named Insured, any additional insured, any purported insured, or any beneficiary or purported beneficiary of this Policy shall submit to the jurisdiction of the New York state and New York federal courts, and shall comply with all the requirements necessary to give such courts jurisdiction. Any litigation arising out of or relating to this Policy shall be brought only in the state or federal courts of 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.

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 (notwithstanding New York’s conflict of law rules). All matters include, without limitation, the procurement, formation, issuance, validity, interpretation, and enforcement of this Policy, as well as claim handling and any other performance in connection with this Policy.

(Complaint, ECF 1-2 at Page 93 of 108).

The Policy also contains the following two-year suit limitation provision:

COMMERCIAL PROPERTY CONDITIONS

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

...

D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage part; and
2. **The action is brought within 2 years after the date on which the direct physical loss or damage occurred.**

(Complaint, ECF 1-2 at Page 100 of 108 (emphasis added); ECF 8 at Page 16 of 29, Page 25 of 29 ¶ 19; ECF 15 ¶ 19).

II. The Lawsuit – Plaintiff’s Suit Limitation Violation

On August 8, 2025, Plaintiff commenced this litigation against Mt. Hawley by filing its Complaint in the Supreme Court of the State of New York, County of New York. (ECF 1-2). Mt. Hawley timely removed the lawsuit to this Court. (ECF 1). In its Complaint, Plaintiff alleges that it submitted an insurance claim to Mt. Hawley for damage to its hotel properties allegedly caused by a storm “during the policy period” (the “Loss”). (ECF 1-2 at Page 4 of 108). No doubt realizing its filing violated the Policy’s two-year suit limitation provision, Plaintiff conveniently omitted reference to the date of the storm in its Complaint. (*See id.*). Accordingly, Mt. Hawley filed a counterclaim for declaratory judgment alleging that the purported storm damage occurred on or before June 27, 2023—the date on which the damage was reported to Mt. Hawley. (ECF 8 at Pages 24-25 of 29). In its original answer to Mt. Hawley’s counterclaims, Plaintiff intentionally avoided admitting the date of loss, pleading that it somehow “did not have sufficient knowledge” regarding whether the loss occurred before it was reported to Mt. Hawley. (ECF 14 ¶ 13). In its amended answer to Mt. Hawley’s counterclaims, Plaintiff was finally forced to admit that the loss did, in

fact, occur on or before June 27, 2023 (more than two years before Plaintiff commenced this action on August 8, 2025). (ECF 15 ¶¶ 8, 13).

Mt. Hawley's pre-suit correspondence with Plaintiff regarding this insurance claim is incorporated by reference into the pleadings. Mt. Hawley's August 10, 2023 coverage decision letter to Plaintiff is incorporated by reference into the Complaint and attached as **Exhibit A-1** to the Kotara Dec. (*See* ECF 1-2 ¶ 21). In that letter, Mt. Hawley explained that it thoroughly investigated the reported damage and paid Plaintiff over \$750,000 in full satisfaction of its Policy obligations. Moreover, the Policy's two-year suit limitation provision was expressly quoted and incorporated into that letter. (**Exhibit A-1** at 5). The suit limitation provision was also explicitly quoted in Mt. Hawley's February 20, 2024 letter to Plaintiff, which is incorporated by reference into Mt. Hawley's Answer and attached as **Exhibit A-2** to the Kotara Dec. (ECF 8 at Page 23 of 29, Eighth Affirmative Defense). Finally, Mt. Hawley's May 22, 2025 letter responding to Plaintiff's appraisal demand is incorporated by reference into the Complaint and attached as **Exhibit A-3** to the Kotara Dec. (ECF 1-2 ¶ 31). In that letter, Mt. Hawley expressly incorporated its August 10, 2023 and February 20, 2024 letters to Plaintiff, including all Policy provisions quoted therein. (**Exhibit A-3** at 1).

III. Plaintiff's Pending Claims

A. Declaratory Judgment Claims

Plaintiff seeks a declaratory judgment that the Policy's New York choice of law provision and two-year suit limitation provision are void and unenforceable and that Oklahoma law governs this dispute. (*See* ECF 1-2 ¶¶ 50-55). For ease of reference, we refer to this herein as the "Declaratory Judgment Claims."

B. The Oklahoma Claims

Plaintiff also asserts two claims under Oklahoma law. First, Plaintiff alleges that Mt. Hawley breached the Policy under Oklahoma law by wrongfully underpaying its insurance claim for storm damage to its hotel properties, for which Plaintiff seeks to recover actual damages, “consequential damages,” attorney’s fees, and interest. (ECF 1-2 ¶¶ 59-64). Second, Plaintiff pleads a claim for “tortious bad faith” under Oklahoma law based on the same alleged conduct—wrongfully denying and underpaying its insurance claim—for which it seeks to recover actual damages. (ECF 1-2 ¶¶ 66-77). For ease of reference, Mt. Hawley refers herein to the claims or relief sought under this subheading as the “Oklahoma Claims.”

C. The New York Claims

Plaintiff pleads three claims under New York law “in the alternative.” (ECF 1-2 ¶¶ 79-80). First, Plaintiff alleges that Mt. Hawley breached the Policy by refusing to pay all amounts due under the Policy, resulting in “direct damages” and unspecified “consequential damages.” (ECF 1-2 ¶¶ 82-84). Second, Plaintiff asserts a claim against Mt. Hawley for purported “deceptive business practices” under New York General Obligations Law § 349 by “withholding relevant information” from Plaintiff and undervaluing the claim. This purported violation allegedly forced Plaintiff to bring this lawsuit, in which Plaintiff seeks actual damages (*i.e.*, the amount allegedly due under the Policy), court costs, and attorney’s fees. (ECF 1-2 ¶¶ 87-95, 114). Finally, Plaintiff asserts a common law claim for breach of the covenant of good faith and fair dealing under New York law, which is based on the same conclusory allegations that Mt. Hawley failed to conduct a reasonable claim investigation, made unspecified misrepresentations, and undervalued and underpaid Plaintiff’s claim. Under that claim, Plaintiff seeks to recover compensatory damages including “additional costs, economic hardship, losses due to nonpayment of the amount the

insurer owed, consequential damages such as attorney’s fees, and exemplary damages. (ECF 1-2 ¶¶ 97-108, 115). For ease of reference, Mt. Hawley refers herein to the claim for breach of contract as the “New York Breach of Contract Claim”, the claim for deceptive business practices as the “Section 349 Claim,” and the common law claim for breach of the duty of good faith and fair dealing as the New York “Bad Faith” Claim.

IV. Mt. Hawley’s Affirmative Defenses and Counterclaims

In its Answer, Mt. Hawley asserted Plaintiff’s clear violation of the Policy’s two-year suit limitation provision as an affirmative defense. (ECF 8 at Pages 16-17 of 29). Mt. Hawley also filed two counterclaims for declaratory judgment, though only the first of these is at issue in this Motion. In the first counterclaim, Mt. Hawley asserts that it is entitled to a judgment declaring that it has no obligation to provide coverage for the damages alleged in Plaintiff’s Complaint because Plaintiff violated the Policy’s two-year suit limitation provision. (ECF 8 at Page 26 of 29).

V. Plaintiff’s Answer to Mt. Hawley’s Counterclaims

As stated above, in its Amended Answer and Affirmative Defenses to Mt. Hawley’s Counterclaims, Plaintiff was forced to admit that the storm damage to its properties occurred on or before June 27, 2023. (ECF 15 ¶ 13, Pages 1-2 of 5). Plaintiff further had no choice but to admit that it commenced this litigation against Mt. Hawley by filing the Complaint on August 8, 2025. (ECF 15 ¶ 8 at Page 2 of 5).

LEGAL STANDARDS

A motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) should be granted “if, from the pleadings, the moving party is entitled to judgment as a matter of law.” *Thyssenkrupp Materials NA, Inc. v. M/V Kacey*, 236 F. Supp. 3d 835, 838 (S.D.N.Y. 2017) (citing *Burns Int’l Sec. Servs., Inc. v. Int’l Union, United Plant Guard Workers of Am. (UPGWA) & Its Local 537*, 47 F.3d 14, 16 (2d Cir. 1995)). “Judgment on the pleadings ‘is appropriate where material facts are

undisputed and where a judgment on the merits is possible merely by considering the contents of the pleadings.” *Allstate Ins. Co. v. Vitality Physicians Group Practice P.C.*, 537 F. Supp. 3d 533, 545 (S.D.N.Y. 2021) (quoting *VCG Special Opportunities Master Fund Ltd. v. Citibank, N.A.*, 594 F. Supp. 2d 334, 339 (S.D.N.Y. 2008)). “Judgment pursuant to Rule 12(c) can be particularly appropriate in breach of contract cases involving legal interpretations of the obligations of the parties because initial interpretation of a contract is a question of law for a court.” *Id.* at 545-46 (quoting *VoiceAge.*, 926 F Supp. 2d at 529). This principle applies to insurance contracts. *Id.*

The Court deciding a Rule 12(c) motion may consider “the complaint, the answer, any written documents attached to them, and any matter of which the court can take judicial notice for the factual background of the case.” *Vitality Physicians Group*, 537 F. Supp. 3d at 546 (citing *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2d Cir. 2011)). “A complaint is also deemed to include any ... materials incorporated in it by reference, and documents that, although not incorporated by reference, are integral to the complaint.” *Id.* A document is “integral” if the complaint “relies heavily on its terms and effect.” *Id.* It is well-settled that an insurance policy is “integral” to an insurance coverage case such as the instant action and may be considered by the Court even though, as here, the policy was not attached to the complaint. *See Tagged, Inc. v. Scottsdale Ins. Co.*, 2011 WL 2748682, at *1 (S.D.N.Y. May 27, 2011) (“The insurance policy falls within the classic category of documents that may be considered although not attached to the complaint because it is a contract that gives rise to the legal obligations on which Tagged's claims are based. *See Ackerman v. Local Union 363, Int'l Bhd. of Elec. Workers*, 423 F.Supp.2d 125, 127 (S.D.N.Y.2006) (“The classic examples of documents that may be considered on a motion to dismiss even though the plaintiff does not physically attach them to the complaint are the contracts that underlie the claims in suit.”); *see also Classic Laundry & Linen Corp. v. Travelers Cas. Ins.*

Co., 2017 WL 4350610, at *3 (S.D.N.Y. Jun. 30, 2017). Accordingly, the Court may properly consider the Policy attached to the Complaint as well as the pre-suit correspondence between Mt. Hawley and Plaintiff incorporated by reference into the pleadings and attached to the Kotara Dec.

ARGUMENT

I. New York Law Governs All Claims and Defenses in This Action

New York law governs all claims and defenses in this action pursuant to the New York choice of law provision in the Policy, in which the parties agreed that: “All matters arising hereunder including questions relating 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.” (ECF 1-2 at Page 93 of 108 (emphasis added)).

In its Complaint, Plaintiff contends that Oklahoma law applies because the Policy’s New York choice of law provision is somehow unenforceable. First of all, Plaintiff fails to cite any authority whatsoever to support this misguided position. Second, Plaintiff filed this lawsuit in New York, conceding the enforceability of the New York forum selection clause that is contained in the same Policy endorsement as the New York choice of law provision. Finally, it is extremely telling that Plaintiff has itself asserted causes of action pursuant to New York law. As stated above, this Court enforced a nearly identical New York choice of law provision in another Mt. Hawley policy in *HKB Hospitality LLC v. Mt. Hawley Insurance Company*. For the same reasons the Court referenced in that opinion, Mt. Hawley’s New York choice of law provision is plainly enforceable in this case.

A. This Court Applies New York Law to Determine the Applicable Law

As a federal court sitting in New York, this Court applies New York’s law to determine the applicable law in a case before it based on the parties’ diversity of state citizenship. *Klaxon Co. v Stentor Elec. Mfg. Co.*, 313 US 487, 496 (1941) (holding that a federal court sitting in

diversity must apply the conflicts of laws rules of the state in which the court sits); *Kinsey v. New York Times Co.*, 991 F.3d 171, 176 (2d Cir. 2021) (citing *Klaxon* and affirming this principle). Because this case was removed to the Southern District of New York and the Court is sitting in diversity jurisdiction, only New York law is relevant in determining the law governing this action.

B. Under New York Law, The Policy’s New York Choice of Law Provision Mandates Application of New York Law

New York statutory law and common law each, separately and independently, mandate enforcement of the choice of law provision presented here. First, under New York General Obligations Law 5-1401, the parties to a contract “in consideration of, or relating to any obligation arising out of a transaction in the aggregate” of at least \$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].” There is no exception to Section 5-1401 based on public policy of another state. *Tosa Pratt, LLC v. Sunset Props., Inc.*, 86 A.D.3d 768, 770–71, (N.Y. App. [3d Dep’t] 2011). That is certainly not surprising because Section 5-1401 was specifically enacted to prohibit traditional choice of law analysis and promote and preserve New York’s status as a commercial center and to maintain predictability for the parties. *IRB-Brasil Resseguros, S.A. v. Inepar Invs., S.A.*, 982 N.E.2d 609, 611-12 (N.Y. 2012).

As Your Honor held in *HKB Hospitality*, an insurance policy meets the \$250,000 threshold, thus mandating the application of Section 5-1401, where the aggregate policy limit exceeds \$250,000. 2024 WL 4349508, at *2 (“Section 5–1401 applies to the Policy at issue, which has a per occurrence loss limit of \$2,944,779.”); *see also La. Revitalization Fund v. Starr Surplus Lines Ins. Co.*, No. 23-cv-1006, 2024 WL 1337617, at *4 (S.D.N.Y. 2024) (magistrate opinion) (“The Policy also has a limit of liability of approximately \$22 million per occurrence. . . . As such, the Policy is a commercial contract involving \$250,000 or more as required for application of General

Obligation Law § 5-1401. The parties do not dispute that the Policy includes a choice-of-law provision mandating application of New York law to a dispute arising under the Policy. Consequently, the Policy's choice-of-law provision governs and precludes a choice-of-law analysis. New York law, as elected by the parties, applies to the dispute.”).

Here, because the \$31,000,000 limit of insurance in the Policy greatly exceeds \$250,000, Section 5-1401 applies, ends any choice of law inquiry, and mandates the application of New York law.

Second, as repeatedly recognized by the overwhelming majority of decisions involving choice of law provisions in insurance policies from this District, New York’s highest court held in *Ministers & Missionaries Benefit Board v. Snow*, 26 N.Y.3d 466, 474-75 (2015), 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. *E.g.*, *Esplanade*, 2025 WL 844021, at *5; *AMVS, Inc. v Mt. Hawley Ins. Co.*, No. 22-CV-10782 (ER), 2025 WL 278438, at *3 (SDNY 2025); *Ram Krishana*, 2024 WL 1657763, at *4; *see also* *Petróleos de Venez., S.A. v. MUFG Union Bank, N.A.*, 41 N.Y.3d 462, 476 (N.Y. Feb. 20, 2024). Mt. Hawley recognizes that a few outlier decisions in non-insurance cases have concluded otherwise. *E.g.*, *BDO USA, P.C. v. Rojas*, No. 24 Civ.101 (CM), 2024 WL 3236822 (S.D.N.Y. June 27, 2024) (involving non-complete agreement employer required employee to sign upon commencing employment).³ First of all, the court in *BDO* did not even mention Section 5-1401 which, as discussed above, mandates the application of New York

³ It is important to note that the analysis in *BDO* and similar cases is confined to situations where Section 5-1401 does not apply – i.e., pure common law choice of law analysis. *Stevens & Co. LLC v. Espat*, No. 24-CV-5223, 2025 WL 950989, at *8 (S.D.N.Y. Mar. 28, 2025), *reconsideration denied*, No. 24-CV-5223, 2025 WL 1425324 (S.D.N.Y. May 16, 2025) (“As to transactions covering \$250,000 or more, enforcement of a New York choice-of-law clause which lacks any relationship to the transaction is required by statute.”); *Cajun Conti, LLC v. Starr Surplus Lines Ins. Co.*, No. 23 CIV. 8844 (KPF), 2025 WL 764131, at *6 (S.D.N.Y. Mar. 11, 2025) (“Because this Court has found that N.Y. Gen. Obl. Law § 5-1401 applies to the Policy, this finding alone is an independent basis for distinguishing” *BDO* and similar cases).

law in this case. In *Webber Commercial Properties v. Mt. Hawley Insurance Company*, Judge Gonzalez of the Eastern District of New York expressly rejected *BDO* for this exact reason because the limits of the subject Mt. Hawley policy exceeded \$250,000, thus falling squarely within the scope of Section 5-1401 and mandating enforcement of the same New York choice of law clause in that Mt. Hawley policy. No. 24-cv-6834, 2025 WL 3501635, at *6 (E.D.N.Y. Dec. 7, 2025). Furthermore, Mt. Hawley would respectfully submit that both the result and the analysis in *BDO* is directly contrary to well-settled New York law that expressly prohibits common-law conflicts analysis in this context. As the courts explained in *Ram Krishana*, 2024 WL 1657763, at *4 and *Starr*, 2024 WL 1337617, at *4, separate and apart from the statutory mandate contained in Section 5-1401, the New York Court of Appeals in *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.* expressly held: “We reaffirm the principle of *IRB-Brasil* and *Ministers* that when the parties have chosen New York Law, a court may not contravene that choice through a common-law conflicts analysis.” 235 N.E.3d 949, 957 (N.Y. 2024). Therefore, pursuant to either Section 5-1401 or New York common law, Mt. Hawley’s New York choice of law provision mandates that New York law governs all claims and defenses in this action.

Under New York law, a choice of law clause that extends to include all matters arising out of the contract, like the clause at issue here, mandates that New York law apply not only to causes of action sounding in contract, but also to non-contractual claims. *See Turtur v. Rothschild Registry Int’l*, 26 F.3d 304, 309–310 (2nd Cir. 1994); *Ramiro Aviles v. S&P Glob., Inc.*, 380 F. Supp. 3d 221, 271 (S.D.N.Y. 2019); *Com. & Indus. Ins. Co. v. U.S. Bank Nat’l Ass’n*, No. 07-cv-05731 (JGK), 2008 WL 4178474, at *3-4 (S.D.N.Y. Sept. 3, 2008) (bad-faith claim fell within scope of choice-of-law clause encompassing any “dispute [involving] the validity or formation of this Policy or the meaning, interpretation or operation of any term, condition, definition or provision

of this Policy”); *Core-Mark Int'l Corp. v. Commonwealth Ins. Co.*, No. 05-cv-00183 (WHP), 2005 WL 1676704, at *3 (S.D.N.Y. July 19, 2005) (bad-faith claim fell within scope of choice-of-law clause encompassing “all matters arising hereunder”); *H.S.W. Enters., Inc. v. Woo Lae Oak, Inc.*, 171 F. Supp. 2d 135, 141 n.5 (S.D.N.Y. 2001). “[P]rovisions applying to disputes ‘arising out of’ or ‘relating to’ a contract are capacious enough to reach related tort claims, . . .” *Ramiro*, 380 F. Supp. 3d at 271 (citing *Chigirinskiy v. Panchenkova*, No. 14 Civ. 4410, 2015 WL 1454646, at *6 (S.D.N.Y. Mar. 31, 2015) (quoting *Refco Grp. Ltd., LLC v. Cantor Fitzgerald, L.P.*, No. 13 Civ. 1654, 2014 WL 2610608, at *40 (S.D.N.Y. June 10, 2014)). *See also, Radiology & Imaging Specialists Lakeland, P.A. v. FUJIFILM Med. Sys., U.S.A., Inc.*, 2021 WL 149027, at *5 (S.D.N.Y. Jan. 15, 2021) (dismissing plaintiff’s claim for violation of the Florida Deceptive and Unfair Trade Practices Act because the parties’ contract “contains a broad choice-of-law provision selecting New York law as the governing law for ‘any claims arising under or relating in any way’ to the agreement”); *Bausch & Lomb Inc. v. Mimetogen Pharms., Inc.*, No. 14-CV-6640-FPG, 2016 WL 2622013, at *13 (W.D.N.Y. May 5, 2016) (relying on a broad New York choice-of-law clause in the parties’ contract to dismiss counterclaim under the Massachusetts Consumer Protection Act).

Accordingly, New York law applies to all claims and defenses in this case.

II. Plaintiff’s Declaratory Judgment Claims Fail As A Matter of Law

Plaintiff seeks a declaration from the Court that two Policy provisions—the New York choice of law provision and two-year suit limitation provision—are unenforceable. For the reasons discussed above and below, both the New York choice of law provision and the two-year suit limitation provision have been consistently enforced by numerous New York courts. Plaintiff’s claims for declaratory judgment therefore fail as a matter of law.

III. This Entire Lawsuit Is Barred By The Policy's Two-Year Suit Limitations Provision

The Policy is clear that any action against Mt. Hawley must be brought within 2 years of the date on which the alleged direct physical loss of or damage to the Property occurred. (*See* Policy, Legal Action Against Us (quoted above)). In its pleadings, Plaintiff admits that the claimed storm damage to its properties occurred on or before June 27, 2023. (ECF 15 ¶ 13). Plaintiff further admits that it commenced this legal action against Mt. Hawley on August 8, 2025, more than two years after the purported storm damage occurred. (ECF 15 ¶ 8). Therefore, as an absolute matter of law, Plaintiffs violated the Policy's Legal Action Against Us condition by bringing this lawsuit more than two years after the date on which the alleged loss or damage occurred.

Suit limitations provisions like the one contained in the Policy are routinely enforced under New York law. *See Pizza on 23rd Corp v. Liberty Mut. Ins. Co.*, 723 F. Supp. 3d 307, 314 (S.D.N.Y. 2024) (granting the insurer's motion for judgment on the pleadings and enforcing the policy's two-year suit limitations provision); *Francabandiero v. Nat'l Gen. Ins. Co.*, No. 22-CV-00641 (JJM), 2023 WL 2253194, at *4 (W.D.N.Y. Feb. 23, 2023). In fact, Judge Rakoff of the Southern District of New York granted Mt. Hawley's motion for summary judgment and enforced this exact same suit limitations provision in another Mt. Hawley policy because the plaintiff—who alleged Mt. Hawley breached its policy by failing to pay for hurricane damage to its property—filed the lawsuit more than two years after the date of the hurricane which allegedly caused the damage. *Civic Conversations, LLC v. Mt. Hawley Ins. Co.*, No. 24-CV-1692 (JSR), 757 F.Supp.3d 418, 426 (S.D.N.Y. 2024).

As noted above, it is undisputed that Plaintiff herein clearly violated the Policy by filing this lawsuit more than two years after the date on which the alleged loss or damage occurred on or before June 27, 2023. Plaintiff's New York Breach of Contract Claim is therefore barred by the two-year suit limitations provision. Moreover, it is well established that Plaintiff's claims for

breach of the implied covenant of good faith and fair dealing (the New York “Bad Faith” Claims) are subject to the same two-year suit limitations period because they are contract claims—not independent torts—and because the provision applies broadly to any “legal action against [Mt. Hawley] under this Policy.” See *Schunk v. New York Cent. Mut. Fire Ins. Co.*, 655 N.Y.S.2d 210, 212 (4th Dep’t 1997); *Smile Train, Inc. v. Ferris Consulting Co.*, 986 N.Y.S.2d 473, 475 (1st Dep’t 2014)); *CLA Milton, LLC v. N. Am. Elite Ins. Co.*, No. 20 CIV. 9458 (ER), 2022 WL 347621, at *4 (S.D.N.Y. Feb. 4, 2022) (granting 12(b)(6) motion to dismiss the insured’s entire lawsuit, including claims for breach of the duty of good faith and fair dealing, for violating the policy’s contractual suit limitations provision). Plaintiff’s Section 349 Claims, which are based upon the same alleged conduct as the New York Breach of Contract Claim and New York “Bad Faith” Claims, are also barred by the two-year suit limitations provision. (*Compare* Complaint ¶¶ 87-91 (alleging Mt. Hawley violated Section 349 by conducting an unreasonable claim investigation and underpaying the claim) *with* Complaint ¶ 99 (alleging Mt. Hawley breached the duty of good faith and fair dealing based on the same alleged conduct)). Finally, Plaintiff’s Oklahoma Claims (which are not cognizable under New York law in the first place as explained below) are also based upon the exact same conduct and likewise barred by the two-year suit limitations provision.

Accordingly, all of Plaintiffs’ claims fail as a matter of law because Plaintiff brought this lawsuit more than two years after the date on which the alleged direct physical loss or damage occurred. Plaintiff itself presumably knows this, as evidence by its initial attempt to avoid referencing or admitting the date of loss in its pleadings. For the same reasons, Mt. Hawley is entitled to a judgment declaring that it has no obligation to provide coverage for the damages alleged in Plaintiff’s Complaint.

IV. Separate And Apart From The Suit Limitations Provision, The Oklahoma Claims, Section 349 Claims, and New York “Bad Faith” Claims Independently Fail As A Matter of New York Law

As stated above, all of Plaintiff’s claims are barred by the Policy’s two-year suit limitations provision. Separate and apart from the suit limitations violation, each of Plaintiff’s claims independently fails for the reasons discussed below.

A. The Oklahoma Claims Fail As A Matter Of Law.

Because New York law governs this dispute based on Mt. Hawley’s choice of law provision, Plaintiff has not (and cannot) allege a plausible basis for the Oklahoma Claims. *See e.g., Esplanade*, 2025 WL 844021, at *5 (precluding claims for extra contractual damages and statutory attorneys’ fees and costs under Louisiana law); *Summerwind W. Condo. Owners Ass’n Inc. v. Mt. Hawley Ins. Co.*, No. 22 CIV. 3165 (JPC), 2025 WL 691663, at *10 (S.D.N.Y. Mar. 3, 2025); *10110 Group, LLC v. Mt. Hawley Ins. Co.*, No. 23-CV-7179 (JMF), 2025 WL 415737, *1 (S.D.N.Y. Feb. 6, 2025) (dismissing claims for statutory attorneys’ fees and costs under Florida law); *AMVS*, 2025 WL 278438, at *3 (dismissing claim for attorney’s fees under Texas law); *U.S. Rubber*, 2024 WL 5268848, at *2 (dismissing bad faith and attorney’s fees claims arising under Texas law). Consequently, all the Oklahoma Claims herein should be dismissed with prejudice for this additional reason.

B. The Section 349 Claims Fail As A Matter of New York Law

As explained above, Plaintiff’s Section 349 Claims are likewise barred by the Policy’s two-year suit limitations provision because they are based upon the exact same conduct as Plaintiff’s New York Breach of Contract Claim and New York “Bad Faith” Claims. These claims also fail for several independent reasons discussed below.

Section 349 makes unlawful deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service. *See* N.Y. Gen. Bus. L. § 349. To state a

viable claim under GBL § 349, a plaintiff must show: (i) acts or practices by defendant that are “consumer-oriented”; (ii) that such acts or practices are deceptive or misleading in a material way; and (iii) that the plaintiff has been injured by reason of those acts. *See Gaidon v. Guardian Life Ins. Co. of Am.*, 94 N.Y.2d 330, 343–44, 704 N.Y.S.2d 177, 182 (1999). “The allegedly deceptive acts, whether misrepresentations or omissions, are governed by an objective standard: whether they were likely to mislead a reasonable consumer acting reasonably under the circumstances.” *Corsello v. Verizon N.Y., Inc.*, 77 A.D.3d 344, 365, 908 N.Y.S.2d 57, 75 (2d Dep’t 2010), *aff’d in part and modified in part*, 18 N.Y.3d 777, 944 N.Y.S.2d 732 (2012). Private disputes between parties—like this insurance coverage dispute—do not fall within the ambit of the statute as a matter of law. *See Oswego Laborers’ Local 214 Pension Fund v. Marine Midland Bank, N.A.*, 85 N.Y.2d 20, 25, 623 N.Y.S.2d 529, 532 (1995). As such, Plaintiff’s Section 349 claim should be dismissed.

1. The Complaint Does Not Allege Consumer-Oriented Conduct

At the outset, it is important to understand that New York courts have routinely held that disputes between an insured and its carrier regarding the scope of coverage—like those presented in this lawsuit—are nothing more than private contractual disputes that lack the consumer impact necessary to state a claim under Section 349. *See DePasquale v. Allstate Ins. Co.*, 179 F. Supp. 2d 51, 58 (E.D.N.Y.), *aff’d*, 50 Fed. Appx. 475 (2d Cir. 2002); *PB Americas Inc. v. Cont’l Cas. Co.*, 690 F. Supp. 2d 242, 252 (S.D.N.Y. 2010) (dismissing claim under GBL § 349 as a mere contractual dispute lacking the necessary consumer impact, and collecting cases holding that Section 349 claims are not cognizable in private disputes concerning scope of coverage); *Continental Cas. Co. v. Nationwide Indem. Co.*, 16 A.D.3d 353, 354, 792 N.Y.S.2d 434, 435 (1st Dep’t 2005) (dismissing claim under GBL § 349 despite allegation that insurers had repeatedly misrepresented the meaning of their “standard comprehensive general liability policies” because

the allegations “at best show a private contract dispute over policy coverage and the processing of defendants’ claims, not conduct affecting the consuming public at large”).

It is well established that the “consumer-oriented” conduct element of this statute requires that a plaintiff show that the practices complained of have a “broad impact on consumers at large; [p]rivate contract disputes unique to the parties . . . would not fall within the ambit of the statute.” *New York Univ. v. Cont’l Ins. Co.*, 87 N.Y.2d 308, 319-20, 639 N.Y.S.2d 283, 289-90 (1995). Likewise, conclusory assertions that a defendant’s conduct was “consumer-oriented” are insufficient to state a claim under GBL § 349. *See Bono v. Monarch Life Ins. Co.*, No. 05-cv-2815, 2006 WL 839412, *3 (W.D.N.Y. Mar. 26, 2006). In other words, a plaintiff cannot state a claim under GBL § 349 based solely on the blanket assertion that conduct is “consumer-oriented.” *Id.* at *2.

Plaintiff herein fails to state a claim under Section 349 for these same reasons—Plaintiff fails to allege any conduct impacting consumers at large that would rise above the level of a private contractual dispute concerning the scope of coverage under the Policy. Plaintiff simply alleges in conclusory fashion that Mt. Hawley violated Section 349 by withholding and/or misrepresenting unspecified information, conducting an unreasonable investigation, and underpaying Plaintiff’s claim without any reasonable basis. (Complaint ¶¶ 88-91). Plaintiff further alleges, in conclusory fashion, that Mt. Hawley’s conduct is “consumer oriented” merely because Mt. Hawley allegedly issues policies to consumers “across the nation.” (Complaint ¶ 93). Against this background, Plaintiff’s Section 349 claim should be dismissed with prejudice.

2. Plaintiff Also Fails To Plead Materially Deceptive Or Misleading Acts Or Practices

Even when a plaintiff successfully alleges consumer-oriented conduct, which is certainly not the case here, a plaintiff must still adequately allege that the defendant engaged in a “deceptive

act or practice” to state a claim under Section 349. *See* N.Y. Gen. Bus. Law § 349. The New York Court of Appeals has defined a “deceptive act or practice” as “a representation or omission likely to mislead a reasonable consumer acting reasonably under the circumstances.” *Gaidon*, 94 N.Y.2d at 344, 704 N.Y.S.2d at 183 (citations omitted). To establish a prima facie case under Section 349, a plaintiff must show that the defendant “engaged in an act or practice that is deceptive or misleading in a material way and that plaintiff has been injured by reason thereof.” *Id.*, 704 N.Y.S.2d at 183 (quotations omitted). A plaintiff cannot maintain a cause of action under Section 349 where he has failed to make “reference to the specific ‘acts, representations and/or omissions’ that [they] claim[] are deceptive.” *Horowitz v. Stryker Corp.*, 613 F. Supp. 2d 271, 287 (E.D.N.Y. 2009). Further, the plaintiff must allege “why these acts were deceptive.” *Id.* A “[p]laintiff may not maintain a cause of action under [GBL] § 349 where . . . she has failed to identify any ‘material’ ‘deceptive acts’ engaged in by the defendant.” *Id.*

Here, Plaintiff fails to allege any specific conduct whatsoever that could possibly qualify as a “deceptive act or practice.” Plaintiff merely alleges, in conclusory fashion, that Mt. Hawley withheld relevant information, misrepresented unspecified facts or policy provisions, failed to conduct a reasonable claim investigation, and underpaid the claim. Nor does Plaintiff allege how these generic, unspecified acts could possibly be construed as “deceptive” or “misleading” to fall within the purview of Section 349. Accordingly, Plaintiff’s Section 349 claim fails for this independent reason as Plaintiff fails to allege any materially deceptive or misleading acts or practices to state a prima facie claim under Section 349.

3. In Addition, Plaintiff Has Not Sustained Any Compensable GBL § 349 Injury

Even assuming, arguendo, that Plaintiff had alleged acts or practices that were “consumer-oriented” and deceptive/misleading in a material way (which Plaintiff clearly has not), Plaintiff

still fails to state a claim under Section 349 because Plaintiff has not sufficiently alleged an injury directly resulting from any deceptive act or practice. *See Stutman v. Chemical Case Bank*, 95 N.Y.2d 24, 29, 709 N.Y.S.2d 892, 896 (2000); *see also Small v. Lorillard Tobacco Co.*, 94 N.Y.2d 43, 55, 698 N.Y.S.2d 615, 620 (1999) (noting that a plaintiff must allege that the defendant has engaged “in an act or practice that is deceptive or misleading in a material way and that plaintiff has been injured by reason thereof”). “Although a monetary loss is a sufficient injury to satisfy the requirement under [Section] 349, that loss must be independent of the loss caused by the alleged breach of contract.” *Spagnola v. Chubb Corp.*, 574 F.3d 64, 74 (2d Cir. 2009). Here, Plaintiff does not allege any injury that is independent and unrelated to the New York Breach of Contract Claim. In fact, Plaintiff specifically asserts that its damages caused by the alleged Section 349 violation are limited to “benefits that should have been paid pursuant to the Policy” as well as court costs and attorney’s fees. (Complaint ¶ 114). Once again, for this independent reason, Plaintiff fails to state a viable claim under Section 349.

C. The New York “Bad Faith” Claims Fail As A Matter of New York Law

As explained above, Plaintiff’s New York “Bad Faith” Claims are barred by the Policy’s two-year suit limitations provision because they are contractual claims based upon the exact same conduct as Plaintiff’s New York Breach of Contract claim. These claims also fail for the independent reasons discussed below.

Plaintiff cannot state a plausible claim for “Bad Faith.” “New York law . . . does not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing when a breach of contract claim, based on the same facts, is also pled,” nor does it recognize “an independent cause of action for bad faith denial of insurance coverage.” *Woodhams v. Allstate Fire & Cas. Co.*, 748 F. Supp. 2d 211, 223 (S.D.N.Y. 2010), *aff’d*, 453 F. App’x 108

(2d Cir. 2012). Indeed, a claim for violation of the covenant cannot survive a motion to dismiss unless “it is based on allegations different from those underlying the breach of contract claim, and the relief sought is not intrinsically tied to the damages that flow from the breach of contract.” *JN Contemp. Art LLC v. Phillips Auctioneers LLC*, 29 F.4th 118, 128 (2d Cir. 2022). “Even where the separate causes of action appear to be based on distinct conduct—such as one alleging conduct intended to frustrate the purpose of the contract and another asserting a failure to perform contractual obligations—they may nevertheless be deemed duplicative if both “arise from the same factual allegations *and* seek identical damages for each alleged violation.” *Corretto LLC v. Erie Ins. Co.*, No. 1:24-CV-02674 (ALC), 2025 WL 2676041, at *2 (S.D.N.Y. Sept. 18, 2025) (Carter, J). (citations omitted).

1. The New York “Bad Faith” Claim Arises From The Same Allegations As The New York Breach of Contract Claim

Here, the New York Breach of Contract Claim and the New York “Bad Faith” Claim rest on the same general allegations concerning Mt. Hawley’s alleged underpayment of the Loss. (Compare ECF 1-2 ¶¶ 82-84 (alleging Mt. Hawley failed to “honor the express terms of the Policy” and pay amounts due under the Policy, therefore breaching the contract) with ¶¶ 97-107 (alleging Mt. Hawley breached the duty of good faith and fair dealing by undervaluing the claim, refusing to honor the Policy’s appraisal provision, and forcing Plaintiff to file this lawsuit to recover amounts due)). While Paragraph 99 of the Complaint includes conclusory examples of Mt. Hawley’s alleged “bad faith” conduct, each of them relate to the circumstances leading to the ultimate dispute between the Parties – Mt. Hawley’s claim determination and payment of the Loss at a lower amount than Plaintiff desires.⁴ Therefore, just as in *Coretteo*, this is a scenario where

⁴ Even if the Court were to consider allegations regarding purported untimely adjustment, such as in Paragraph 53.c. and g. as different from the underlying New York Breach of Contract Claim (which they are not), Plaintiff still could

the crux of the allegations are dissatisfaction with the insurers performance of its contractual obligations.

2. **Plaintiff Cannot Recover Attorney's Fees As A Matter of New York Law**

Attorney fees are not recoverable in first party insurance disputes under New York law. *Globecon Grp., LLC v. Hartford Fire Ins. Co.*, 434 F.3d 165, 170 (2d Cir. 2006); *Northway Med. Ctr. Condo v. Hartford Fin. Servs. Grp., Inc.*, No. 20 CV 09864 (NSR), 2022 WL 94884, at *4 (S.D.N.Y. Jan. 10, 2022). The only arguable exception (which Mt. Hawley disputes) might be in cases of “such a showing of such bad faith in denying coverage that no reasonable carrier would, under the given facts, be expected to assert it.” *Northway*, 2022 WL 94884 at *4. However, Plaintiff fails to allege any facts that could plausibly show Mt. Hawley’s conduct was more than an arguable difference of opinion or exhibited a gross disregard for its policy obligations. *Id.* Therefore, there is no plausible basis to recover attorney fees in the Complaint. Finally, any alleged injury stems from the same underlying purported harm, Mt. Hawley’s alleged underpayment of the claim. For each of these independent reasons, Plaintiff has not stated a plausible New York “Bad Faith” Claim.

CONCLUSION

For the reasons set forth above, New York law governs this dispute, Mt. Hawley is entitled to a judgment declaring that it has no obligation to provide coverage for the damages alleged in Plaintiff’s Complaint, and all of Plaintiff’s claims against Mt. Hawley fail as a matter of law and should be dismissed with prejudice in their entirety.

not assert a plausible “bad faith” claim on those threadbare and conclusory allegations. There are simply no factual allegations on these points in the Complaint as required under *Iqbal* and *Twombly*.

Respectfully submitted,

/s/ Greg K. Winslett

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WORD COUNT CERTIFICATION

This is to certify that this motion's word count is below 8,750 in compliance with the word court limit in Rule 4.C. of the Court's individual rules. According to the word-processing program used to prepare the motion, the motion contains 7,211 words excluding the tables, signature blocks, certifications, and case caption.

/s/ Greg K. Winslett

Greg K. Winslett

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument is being served upon all counsel of record in accordance with the Federal Rules of Civil Procedure, on this day of February 5, 2026.

/s/ Greg K. Winslett

Greg K. Winslett