

**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

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

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I. PRELIMINARY STATEMENT

Defendant wants to have its cake and eat it too. It seeks the application of the Policy's New York choice-of-law clause, while at the same time claiming that a suit filed timely under New York law is untimely.¹ The date of loss is June 27, 2023, Defendant issued its coverage letter and first written denial on August 10, 2023, and Plaintiff filed this action on August 8, 2025.² On the face of the pleadings these dates establish that suit was brought within two years of Defendant's breach of the contract, which accrues on the date of denial under New York law, and within the limitations period that the Policy itself incorporates. Under New York law, a claim does not accrue until there is an actual breach of the contract.³

Defendant insists that the Policy requires that any "legal action" must be brought within two years of the *date of loss*, but that position not only disregards the full text of the Policy, it raises factual issues that cannot be resolved on a motion for judgment on the pleadings.⁴ And once the Policy is read in full, it becomes clear that the limitations period is governed not by Defendant's selective reading, but by the law the Policy itself incorporates. The Policy expressly provides that: "**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."⁵ Using the same Policy Defendant claims controls, it is clear that the Policy

¹ See [Dkt. 22-1].

² *Id.* see also [Dkt. 1-2].

³ See *Ezra v. Weitz & Luxenberg, P.C.*, 794 F. App'x 27, 29 (2d Cir. 2019) (citing *T & N PLC v. Fred S. James & Co. of N.Y., Inc.*, 29 F.3d 57, 59 (2d Cir. 1994) ("Under New York law, a cause of action for breach of contract accrues . . . when the contract is breached.")).

⁴ See [Dkt. 1-2] at 100.

⁵ *Id.* 93

incorporates the New York statutory period and confirms that Plaintiff's claims cannot be barred by the contractual limitation Defendant invokes.⁶

By asking the Court to focus only on the two-year reference tied to the loss while ignoring the "Legal Action Conditions Endorsement" that expressly incorporates New York statutes, Defendant is not enforcing the Policy. Defendant is selectively enforcing a single phrase of the Policy and discarding the part that preserves the Plaintiff's right to sue so long as the action is timely under New York law. That selective reading cannot support judgment on the pleadings, particularly where the Court must accept Plaintiff's allegations regarding the date of denial and accrual and resolve any ambiguity in Policy language in Plaintiff's favor at this stage.

Accordingly, the Court should deny Defendant's motion for judgment on the pleadings.⁷ Plaintiff timely sued within two years of Defendant's breach and within the limitations period adopted by the Policy, which incorporates New York statutory law on accrual and limitations.

II. RESPONSE TO FACTUAL BACKGROUND

Plaintiff commenced this action on August 8, 2025, after Mt. Hawley failed to properly adjust and pay a valid insurance claim for storm-related damage to its hotel properties. See [Dkt. 1-2]. Contrary to Mt. Hawley's insinuations, Plaintiff's Complaint fully complied with applicable pleading standards. There is no requirement that a complaint recite the precise date of loss, and Plaintiff's allegations regarding the occurrence of a covered storm "during the policy period" were more than sufficient at the initial pleading stage. The actual timing and circumstances of the loss

⁶ See *Ely-Cruikshank Co. v. Bank of Montreal*, 81 N.Y.2d 399, 402, 599 N.Y.S.2d 501, 502, 615 N.E.2d 985, 986 (1993) ("In New York, a breach of contract cause of action accrues at the time of the breach.") (Citing *Edlux Constr. Corp. v. State of New York*, 252 App Div 373, 374, affd 277 NY 635.

⁷ Plaintiff is withdrawing both the Section 349 claim and the request for attorney's fees to streamline the issues and will file a stipulation of dismissal after conferring with counsel.

remain factual matters to be established through the ordinary course of discovery, not through Mt. Hawley's selective narrative.

III. LEGAL ARGUMENT

A. Applicable legal standard.

Rule 12(c) permits a party to move for judgment on the pleadings once the pleadings are closed, so long as the motion does not delay trial. Fed. R. Civ. P. 12(c). In considering a Rule 12(c) motion, "the court's task is to assess the legal feasibility of the complaint; it is not to assess the weight of the evidence that might be offered on either side..." See *Lynch v. City of N.Y.*, 952 F.3d 67, 75 (2d Cir. 2020). The non-movant's allegations must be accepted as true, and the Court must "decline to weigh competing allegations asserted by the moving party." See *Lively v. WAFRA Inv. Advisory Grp., Inc.*, 6 F.4th 293, 301 (2d Cir. 2021). Where a question of fact remains in dispute, "it [is] improper for the district court to answer it on a motion for dismissal on the pleadings." See *Sheppard v. Beerman*, 18 F.3d 147, 151 (2d Cir. 1994).

B. Even under New York law, Defendant cannot establish a limitations bar to Plaintiff's claims.

Under New York law, the limitations period on a breach of insurance contract claim begins when the insurer issues a clear disclaimer of coverage. See *Anderson v. Allstate Ins. Co.*, 2019 NY Slip Op 02768, 1, 171 A.D.3d 1331, 1332-33, 97 N.Y.S.3d 800, 802 (App. Div. 3rd Dept.) (citing *Ely-Cruikshank Co. v Bank of Montreal*, 81 NY2d 399, 402, 615 NE2d 985, 599 NYS2d 501 [1993])). "[A] breach of contract cause of action accrues **at the time of the breach.**" See *Filasky v. Andover Cos.*, 2024 NY Slip Op 04545, ¶ 2, 230 A.D.3d 1297, 1300, 217 N.Y.S.3d 223, 225 (App. Div. 2nd Dept) (citing *Ely-Cruikshank Co. v Bank of Montreal*, 81 NY2d 399, 402, 615 N.E.2d 985, 599 N.Y.S.2d 501 (1993) (emphasis added); see also *Ezra v. Weitz & Luxenberg, P.C.*, 794 F. App'x 27, 29 (2d Cir. 2019) (citing *T & N PLC v. Fred S. James & Co. of N.Y., Inc.*,

29 F.3d 57, 59 (2d Cir. 1994) (“Under New York law, a cause of action for breach of contract accrues . . . when the contract is breached.”); *see also Sternberg v. Continuum Health Partners, Inc.*, 2020 NY Slip Op 05071, 2, 186 A.D.3d 1554, 1557, 131 N.Y.S.3d 356, 359 (App. Div. 2nd Dept.).

1. The Policy’s legal action limitations provision does not bar this lawsuit.

Defendant’s limitations argument fails on the face of the pleadings and under the very Policy it cites as controlling. New York law makes clear that a breach of contract claim accrues when the contract is breached, for example when the insurer takes a definitive coverage position, not on the date of the underlying loss event. Under that rule, the earliest plausible accrual date in this case is August 10, 2023, when Defendant issued its coverage letter and denied the claim. Plaintiff then filed this action on August 8, 2025. *See* [Dkt. 1-2]; *see also* [Dkt. 22-1] (Defendant’s Exhibit A). Defendant’s argument that the New York filing is late, disregards the Policy’s explicit agreement that any suit “*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...” *See* [Dkt. 1-2] at 93. Defendant cannot deny that Plaintiff acted within the two-year period.

Instead, Defendant insists on reading the Policy as if it required any “legal action” to be brought within two years of the date of loss and nothing more. A limitations defense on a motion for judgment on the pleadings must be clear from the complaint and the documents it incorporates. Here, the evidence shows a denial on August 10, 2023, a filing on August 8, 2025, and Policy language that adopts New York law and practice.⁸ Any different construction of how the contractual language interacts with those dates would require the Court to resolve questions of policy interpretation in Defendant’s favor, which is improper on the pleadings. Under the dates

⁸ *See* [Dkt. 1-2]; *see also* [Dkt. 22-1] (Defendant’s Exhibit A).

alleged and under the Policy as written, Plaintiff acted within the applicable limitations period, and Defendant cannot establish a limitations bar as a matter of law.

Pizza on 23rd Corp. v. Liberty Mutual Insurance Co. does not support dismissal here because that case addressed only whether the phrase “direct physical loss or damage” was ambiguous for purposes of determining when a contractual limitations period begins to run on a breach of contract claim.⁹ However, Plaintiff’s argument is that the statute of limitations under New York law runs from the date of breach, and Defendant has not shown when any breach occurred or briefed that question at all. Because *Pizza on 23rd* concerns only how to measure a contractual limitations period tied to the date of physical loss, and not when a breach occurs for purposes of New York’s statute of limitations, it is readily distinguishable. The same is true of the other cases Defendant cites, all of which concern how to calculate a contractual limitations period based on the date of physical loss, not how to determine the accrual date of a breach under New York law. Specifically, *Civic Conversations, LLC v. Mt. Hawley Insurance Co.* where that case only addressed whether an insurer waives a suit limitation defense by first raising it in an amended answer.¹⁰ That procedural question has nothing to do with the issue here, which is when the statute of limitations begins to run under New York law.

Accordingly, Defendant’s Motion for Judgment on the Pleadings based on Defendant’s selected Policy’s language should be denied in its entirety and as to all claims.

C. New York law does not govern all claims and defenses at issue.

New York’s choice-of-law rules require applying Oklahoma law to Plaintiff’s extra-contractual claims. *See Danaby Rentals, Inc. v. Mt. Hawley Ins. Co.*, 2026 LX 45735, at *43 (S.D.N.Y. Feb. 17, 2026); *see also Commerce & Indus. Ins. Co. v. United States Bank Nat’l Ass’n*,

⁹ *Pizza on 23rd Corp. v. Liberty Mut. Ins. Co.*, 723 F. Supp. 3d 307, 313 (S.D.N.Y. 2024).

¹⁰ *Civic Conversations, LLC v. Mt. Hawley Ins. Co.*, 757 F. Supp. 3d 418, 423 (S.D.N.Y. 2024).

No. 07 Civ. 5731 (JGK), 2008 U.S. Dist. LEXIS 67768, 2008 WL 4178474, at *5–6 (S.D.N.Y. Sept. 3, 2008) (recognizing an actual conflict between New York law and jurisdictions that permit tort claims based on an insurer’s unreasonable denial of benefits). As the Southern District of New York recently held, where a tort claim “is not covered by the choice-of-law provision in the contract, this Court must apply New York’s interest analysis which gives controlling effect to the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in the litigation.” *Id.* (citing *Winter-Wolff Int’l*, 499 F. Supp. 2d at 240 (citation modified)).

New York law does not control every claim in this action. The Policy’s choice of law clause governs only contractual rights and obligations. Plaintiff’s extracontractual causes of action arise from Defendant’s conduct in adjusting and denying the claim, not from the Policy’s terms. Courts routinely hold that a choice of law clause limited to the policy or contract does not extend to tort based or statutory bad faith claims. The state with the most significant relationship to the alleged misconduct supplies the governing law for those claims. The loss occurred in Oklahoma, the claim was adjusted in Oklahoma, and the alleged injury was suffered in Oklahoma. Those contacts give Oklahoma the dominant interest in regulating the conduct at issue.

Under New York law “[a]ll ambiguities must be resolved against the insurer, the drafter of the language.” *See SSP Springs, LLC v First Specialty Ins. Corp.*, 213 AD3d 517, 517 (1st Dep’t 2023). Here, the Policy’s choice-of-law clause expressly provides that New York law governs “All matters arising out of or relating to this Policy” including “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.” *See* [Dkt. 1-2] at 93. It is clear that the Policy does not extend to extra-contractual claims that arise independent of the Policy

itself, and the clause contains no language indicating that statutory or common law obligations tied to an insurer's conduct fall within its reach.

Defendant reads the choice of law clause as a blanket rule that New York law governs every claim in this case, yet the Policy does not support that interpretation. The clause addresses contractual rights and obligations under the Policy. It does not clearly announce that New York law will control statutory bad faith and other extra-contractual duties that arise from Oklahoma law and would apply to Defendant's conduct even if the Policy language were undisputed. Any uncertainty on that point must be resolved against Defendant as the drafter and against the expansion of a choice-of-law clause to wipe out independent statutory remedies.

The extracontractual claims sound in tort and arise from Defendant's claims handling conduct. The governing law for such claims is the law of the state with the most significant relationship to the events giving rise to the alleged injury. Oklahoma has the strongest connection to the claim. The property is located in Oklahoma, the investigation and denial occurred in Oklahoma, and the alleged harm was felt in Oklahoma. Application of New York law to these claims would disregard the locus of the alleged misconduct and would undermine Oklahoma's interest in regulating insurer conduct within its borders. The Court should therefore decline to apply New York law to Plaintiff's extracontractual claims.

D. Plaintiff's declaratory judgment claims are proper and ripe for decision.

The Second Circuit has held that courts considering declaratory relief look to "whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved" and "whether a judgment would finalize the controversy and offer relief from uncertainty." *See Bright Kids NYC, Inc. v. QuarterSpot, Inc.*, No. 1:20-cv-9172 (MKV), 2021 U.S. Dist. LEXIS 178867, at *11 (S.D.N.Y. Sep. 20, 2021) (citing *Dow Jones & Co. v. Harrods Ltd.*, 346 F.3d 357, 359 (2d Cir. 2003)). Both elements are met here. The Complaint alleges that this dispute is entirely centered

in Oklahoma, that there is a clear conflict between Oklahoma and New York law on first-party insurance rights, hail coverage, cosmetic damage exclusions, penalties, and insureds' remedies, and that a two-year period running from the date of loss rather than the date of denial "unfairly benefits the insurer at the expense of the policyholder." [Dkt 1-2] ¶¶ 53–55. Plaintiff seeks a declaration, in this concrete Oklahoma hail claim with this Oklahoma insured and denial timeline, on two governing questions: whether Oklahoma or New York law controls Defendant's duty of good faith and whether limitations runs from the date of denial, not the date of loss. A ruling on those points would clarify and settle the key legal issues by fixing the scope of the New York clause, its interaction with Oklahoma's insurance statutes, and resolving the statute of limitations issue under the applicable state law.

A declaratory judgment would allow the parties to move forward in this litigation with a clear understanding of which state's law applies and how the Policy's provisions bear on the issues in dispute. Defendant has not even attempted to engage in a declaratory judgment analysis or to address whether abstention principles would justify declining jurisdiction. Decisions such as *Danaby*, involving this same insurer, confirm that Mt. Hawley's New York clause does not automatically displace extra-contractual bad-faith remedies where another state has the stronger interest. For these reasons, the request to dismiss the declaratory judgment claim should be denied.

E. The Oklahoma Causes of Action should not be dismissed.

1. The choice-of-law provision does not apply to Plaintiff's extracontractual claims.

Applying New York's interest-analysis test here, these contacts require the application of Oklahoma law to Plaintiff's extra-contractual causes of action. Oklahoma has the greatest concern over Plaintiff's extra-contractual claims. As the *Danaby* court reasoned in the analogous Texas context, and as applies equally here, the Policy was delivered in Oklahoma, Plaintiff is based in

Oklahoma, the alleged statutory tort arises under Oklahoma law, and Plaintiff allegedly suffered injury from that tort in Oklahoma. *Id.*

Plaintiff's extra-contractual claims arising under the Oklahoma Insurance Code or the Deceptive Trade Practices Act, are statutory remedies provided to Oklahoma insureds and cannot be eliminated through a choice-of-law clause that never references them. If Defendant truly intended New York law to apply, then it could not have contemplated statutory causes of action that exist only under Oklahoma law for the common law breach of the duty of good faith, violations of the Oklahoma Insurance Code and Deceptive Trade Practices Act.

In addition, the policy at issue here was **negotiated in Oklahoma, sold in Oklahoma**, involves a **Oklahoma insured**, and protects immovable real **property located in Oklahoma**. If the Court declines to apply Oklahoma law here, Plaintiff would be deprived of the statutory protections designed to regulate insurers in Oklahoma and would give Defendant the benefit of selling coverage in Oklahoma while escaping the very obligations that Oklahoma law imposes. Plaintiff's extra-contractual claims arise from duties Oklahoma law places on insurers to protect policyholders, and those duties cannot be contracted away through a New York choice of law provision because there are no equivalent statutes that could have been contemplated. To hold otherwise would strip Oklahoma insureds of rights guaranteed to them by statute and reward Defendant's effort to funnel disputes into New York to insulate itself from liability.

Further, this case is also readily distinguishable from *HKB Hosp. LLC v. Mt. Hawley Ins. Co.*, which involved only a breach-of-contract claim governed by the policy's choice-of-law provision. In *HKB Hospitality*, the court applied New York law because the dispute concerned contractual rights and obligations arising directly under the policy.

Here, by contrast, the issue is Plaintiff's extra-contractual claims under Oklahoma law, including tortious bad faith arising from Oklahoma's insurance code. These statutory tort claims exist independent of the Policy and therefore fall outside the scope of the Policy's choice-of-law clause. As this district has recognized, when a tort claim is not governed by a contractual choice-of-law provision, the court must apply New York's interest-analysis framework which, for the reasons already discussed, points squarely to Oklahoma as the jurisdiction with the greatest interest in regulating insurer conduct and enforcing its insurance statutes.

Accordingly, Plaintiff's extracontractual claims should proceed under Oklahoma law, and Defendant's effort to dismiss those viable claims should be denied.

F. The Oklahoma and New York bad-faith claims remain actionable under established New York law.

1. The Oklahoma claims are not barred as a matter of law.

Defendant's contention that Plaintiff's Oklahoma bad faith claims "fail as a matter of law" rests on the *same* issue that another Court in this District has already rejected in a recent case involving this *same* insurer and this *same* defense counsel. *See Danaby Rentals, Inc. v. Mt. Hawley Ins. Co.*, 2026 LX 45735, at *47 (S.D.N.Y. Feb. 17, 2026). There, as here, Mt. Hawley argued that a New York choice of law provision in the policy automatically rendered the insured's extra contractual state law claims not cognizable and eliminated any need for a conflict of law analysis. However, the Court squarely rejected that position and held that the policy's choice of law clause did not control the insured's statutory bad faith claims.

In *Danaby*, the Court first recognized an actual conflict between New York law, which does not recognize a separate cause of action for bad faith refusal to pay, and the forum state's law, which does. *Id.* The Court reasoned that the conflict "prompt[ed] another choice of law analysis" for the extra contractual claims, even though New York law governed the breach of

contract analysis. *Id.* (citing *Fin. One Pub. Co. v. Lehman Bros. Special Fin., Inc.*, 414 F.3d at 331; *Commerce & Indus. Ins. Co. v. United States Bank Nat'l Ass'n*, No. 07 Civ. 5731 (JGK), 2008 U.S. Dist. LEXIS 67768, 2008 WL 4178474, at *5-6 (S.D.N.Y. Sept. 3, 2008). The Court then applied New York's own precedent to determine the scope of the policy's New York choice of law clause, explaining that under New York law "tort claims are outside the scope of contractual choice-of-law provisions that specify what law governs construction of the terms of the contract" and that New York courts are reluctant "to construe contractual choice-of-law clauses broadly to encompass extra-contractual causes of action." *Id.* (citing *Krock v. Lipsay*, 97 F.3d 640, 645 (2d Cir. 1996). Based on that authority, the Court held that "matters arising hereunder" is a narrow clause limited to contract claims, leaving the statutory bad-faith claims outside its scope and subject to New York's interest-analysis framework.

At the pleadings stage, the Oklahoma claims cannot be dismissed simply by asserting that New York law governs. The Court must accept the complaint's factual allegations as true and draw all reasonable inferences in Plaintiff's favor.¹¹ On the face of the pleadings, those allegations present a substantive conflict between Oklahoma law and New York law, which is sufficient at this stage to require a full choice-of-law analysis rather than foreclose the claims outright. But as explained above, New York courts apply the policy's choice-of-law provision only to contractual claims, not to tort or statutory claims that arise outside the four corners of the policy. Here, Defendant has not shown that New York law governs Plaintiff's non-contract claims, and it has not conducted any interest-analysis at all. The decisions Defendant cites were resolved only after the courts determined that no such conflict existed in those cases. Here, the complaint alleges facts

¹¹ See *Mishan & Sons, Inc. v. Caraway Home, Inc.*, No. 24-CV-8929, 2025 LX 347995, at *4 (S.D.N.Y. Sep. 8, 2025) (When Plaintiff is the non-movant on a Rule 12(c) motion, the Court must accept all factual allegations in the complaint as true and draw all reasonable inferences in Plaintiff's favor).

that, if credited, establish a real conflict in the governing law, and that is enough to sustain the Oklahoma claims at this early stage.

Accordingly, the Oklahoma claims remain viable and should not be dismissed.

2. Plaintiff's allegations go well beyond simple dissatisfaction and state a plausible claim for bad faith.

Under New York law, an insurer has a duty to “investigate in good faith and pay covered claims.” See *Gutierrez v. Gov't Emps. Ins. Co.*, 136 A.D.3d 975, 976-77 (N.Y. App. Div. 2016) (quoting *Bi-Economy Mkt., Inc.*, 10 N.Y.3d 187). When an insurer breaches this duty, the insured is entitled to recover not only the value of the claim but also consequential damages that may exceed the policy limits. (see *Panasia Estates v. Hudson Ins. Co.*, 10 N.Y.3d 200, 203, 856 N.Y.S.2d 513, 886 N.E.2d 135; *Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y.*, 10 N.Y.3d at 195, 856 N.Y.S.2d 505, 886 N.E.2d 127). “[T]he covenant of good faith and fair dealing is implicit in every contract’ under New York law . . .” See *Schwartzco Enters. Ltd. Liab. Co. v. TMH Mgmt., Ltd. Liab. Co.*, 60 F. Supp. 3d 331, 364 (E.D.N.Y. 2014) (quoting *Fillmore E. BS Fin. Subsidiary LLC v. Capmark Bank*, 552 F. App'x 13, 16 (2d Cir. 2014) (quoting *Consol. Edison, Inc. v. Ne. Utils.*, 426 F.3d 524, 529 (2d Cir. 2005)).

New York courts have recognized that “damages for breach of that duty include both the value of the claim, and consequential damages, which may exceed the limits of the policy, for failure to pay the claim within a reasonable time.” *Id.* Most recently, the Kings County Supreme Court denied summary judgment on this very issue, reaffirming that policyholders may pursue a claim for breach of the implied covenant and seek consequential damages beyond policy limits. See *Michael R Postar, Inc. v. Starr Surplus Lines Insurance Company*, Order Denying Partial Summary Judgment dated Sept. 29, 2025, attached as Exhibit A.

On a motion for judgment on the pleadings, the Court must accept as true Plaintiff's detailed bad-faith allegations in its Complaint. Plaintiff alleges that Defendant (i) made specific misrepresentations regarding coverage and the condition of the Properties; (ii) failed to properly investigate all damage; (iii) refused to record obvious evidence of covered interior damage; (iv) forced Plaintiff to retain counsel to obtain benefits owed under the Policy; (v) pursued an outcome-oriented investigation; (vi) substantially undervalued the admitted damage by omitting necessary materials and repairs; (vii) failed to write an estimate that included all storm-related damage within the Policy Period; and (viii) denied Plaintiff's right to timely invoke appraisal even while admitting coverage. [Dkt. 1-] at ¶ 99(1)–(8). These allegations describe specific conduct that, if proven, constitutes a breach of the covenant of good faith and fair dealing under New York law. At this stage, they must be taken as true, and they more than plausibly state a viable claim, which forecloses dismissal as a matter of law.

Defendant's failure to act in good faith has caused Plaintiff to suffer significant and foreseeable damages beyond the policy limits, warranting recovery of consequential damages. The nature of the insurance policy at issue—covering hotel properties—made it clear that an insurer's unreasonable delay or wrongful denial of coverage would have serious financial consequences for Plaintiff. Hotels operate with continuous overhead expenses, including storm-related maintenance, reduced-occupancy impacts, and guest-service demands. When an insurer fails to pay a covered claim in a timely manner, the insured is left to bear these financial burdens alone, often resulting in severe economic strain. Additionally, due to inflation and rising operational costs, Plaintiff has been forced to pay significantly higher expenses than they would have if Defendant had fulfilled its obligations in a timely manner. These increased costs, including higher rental rates, labor costs,

and repair expenses, were entirely foreseeable at the time of contracting, as businesses rely on insurance coverage to maintain stability in the event of a loss.

Based on the foregoing, New York law makes clear that an insurer's breach of the implied covenant of good faith and fair dealing is actionable and allows for the recovery of consequential damages.

IV. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Plaintiff herein prays that, the Court deny Defendant's Motion for Judgment on the Pleadings in its entirety. Plaintiff respectfully requests the Court grant such other and further relief, general or special, at law or in equity, to which Plaintiff may show itself to be justly entitled.

Dated: February 26, 2026

Respectfully submitted,

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ATTORNEY FOR PLAINTIFF

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 4,718 words excluding the tables, signature blocks, certifications, and case caption.

/s/ Vincent P. Circelli _____

Vincent P. Circelli

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 26, 2026.

/s/ Vincent P. Circelli _____

Vincent P. Circelli