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

REPLY BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

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INTRODUCTION

Defendant Mt. Hawley Insurance Company ("Mt. Hawley") files this reply brief in support of its motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure (Doc. 21, the "Motion").

An order dismissing this entire lawsuit is warranted because Plaintiff filed its Complaint more than two years after the storm that allegedly damaged Plaintiff's property. This directly violates the Policy's two-year suit limitation provision, which states: "No one may bring a legal action against [Mt. Hawley] under this Policy unless . . . [t]he action is brought within 2 years after the date on which the direct physical loss or damage occurred." (*See* Complaint, Doc 1-2 at Page 100 of 108). As previously explained in Mt. Hawley's Motion, courts in this District routinely enforce these types of suit limitation provisions in situations where it is undisputed that the lawsuit was filed more than two years after the date of loss. *See, e.g., Pizza on 23rd Corp. v. Liberty Mutual Ins. Co.*, 723 F. Supp. 3d 307, at 312 (S.D.N.Y. 2024) (granting the insurer's motion for judgment on the pleadings because the insured violated a substantively identical suit limitation provision by filing the lawsuit more than two years after the date of loss).

For purposes of this Motion, the only two material facts are undisputed—Plaintiff admits that the date of loss was June 27, 2023, and that Plaintiff filed this action more than two years later on August 8, 2023. (Doc. 23, "Opposition" at ECF Page 5 of 19). On that basis alone, Plaintiff's Complaint should be dismissed in its entirety. Plaintiff presumably recognized this reality from the beginning and intentionally omitted any reference regarding the date of loss in its Complaint. Of course, Plaintiff had no choice but to eventually admit the storm damage occurred on or before June 27, 2023 in response to Mt. Hawley's counterclaim. (*See* Doc. 15 ¶¶ 8, 13).

Plaintiff's argument regarding the suit limitation is based upon a fundamental misunderstanding of the issue. Plaintiff states in its opposition that "…Plaintiff's argument is that

the *statute of limitations* under New York law runs from the date of breach …" (Opposition at ECF page 9 of 19 (emphasis added)). Plaintiff then cites to a number of cases where the court has said that the limitation period begins on the date of the breach in the context of a *statute of limitations*. The problem is that in this case we are dealing with a contractual suit limitation provision which specifies the date of loss as the start date for the two-year period to file suit. Such provisions are allowed and enforced under New York law. *See Anderson v. Allstate Ins. Co.*, 171 A.D.3d 1331, 1333 (N.Y. App. Div. [3d Dep't] 2019) (affirming dismissal in favor of the insurer because the insured filed the lawsuit more than two years after the date of loss in violation of the applicable suit limitations provision); *see also* NY CPLR § 201 ("An action . . . must be commenced within the time specified in this article unless a different time is prescribed by written agreement."). In this case, based upon Plaintiff's own admitted facts regarding the date of loss and the date suit was filed, the policy's suit limitation provision was breached and the entire suit is time barred.

In addition, Plaintiff incorrectly claims that the Policy's New York choice of law provision does not apply to its "extra-contractual" claim for "bad faith" claim handling under Oklahoma law (while apparently conceding that the provision applies to its breach of contract claim).[1] Plaintiff's "interpretation" flatly contradicts the plain, unambiguous terms of that provision, which states as follows:

> *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*.

[1] Mt. Hawley respectfully submits, at the outset, that this misguided argument is a complete red herring. Even if Plaintiff were correct on this point (which is clearly not the case) those Oklahoma claims would still be barred by the suit limitations provision.

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

Plaintiff itself admits that "Plaintiff's extracontractual causes of action arise from Defendant's conduct in adjusting and denying the claim …" (Opposition at ECF Page 10 of 19) and "[t]he extracontractual claims sound in tort and arise from Defendant's claims handling conduct." (Opposition at ECF Page 11 of 19). Under no reasonable reading is the language of the New York choice of law provision not broad enough to encompass the Oklahoma "bad faith" claim.

Therefore, Plaintiff's Oklahoma claims, including the claim for "bad faith" claim handling, fail as a matter of law. *See, e.g., Webber Commercial Properties, LLC v. Mt. Hawley Ins. Co.*, No. 24-CV-6834, 2025 WL 3501635, at *5 (E.D.N.Y. Dec. 7, 2025) (New York choice of law provision including "all matters" related to Mt. Hawley's "performance" under the policy covered allegations of "bad faith," so the insured could not bring a claim for "bad faith" under Florida law).

Moreover, under New York law, Plaintiff's claim for breach of the implied covenant of good faith and fair dealing is itself a contract claim that is subject to the same limitations period as its claim for breach of contract. *See 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). Finally, because Plaintiff has now withdrawn both its GBL Section 349 claim and its request for attorney's fees, Mt. Hawley will not address the merits of those claims herein. (*See* Opposition at ECF Page 6 of 19, fn. 7). (Of course, as stated in Mt. Hawley's Motion, those claims are plainly also barred by the suit limitation provision).

ARGUMENT

I. Plaintiff violated the Policy's two-year suit limitations provision, which is fully enforceable.

"As with the construction of contracts generally, unambiguous provisions of an insurance contract must be given their plain and ordinary meaning, and the interpretation of such provisions is a question of law for the court." *HKB Hosp. LLC v. Mt. Hawley Ins. Co.*, No. 23-CV-372 (JPO), 2024 WL 4349508, at *4 (S.D.N.Y. Sept. 30, 2024).

As noted above, the choice of law provision provides that "all matters" 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"—are governed by New York law. While New York's general rule is that the statute of limitations begins to run from the date a contract is breached, that does not apply where the parties set their own shorter limitations period in the contract itself. *See* NY CPLR § 201 ("An action . . . must be commenced within the time specified in this article unless a different time is prescribed by written agreement."). Under New York law, contractual limitations periods in insurance policies that modify the statute of limitations by specifying a shorter, but reasonable, period within which to commence an action (including provisions that modify the date on which the limitations period begins to run) are plainly enforceable. *See, e.g.*, *Pizza on 23rd Corp. v. Liberty Mutual Ins. Co.*, 723 F. Supp. 3d 307, at 312 (S.D.N.Y. 2024). In *Pizza on 23rd Corp*, Judge Gardephe of this District held that a virtually identical two-year suit limitation provision was unambiguous as to when the limitations period begins to run—the date of loss. *See id.* at 313-14 (granting the insurer's motion for judgment on the pleadings because the insured filed the lawsuit on November 4, 2022, more than two years after the alleged water leak on July 1, 2020); *see also Civic Conversations, LLC v. Mt. Hawley Ins. Co.*, 757 F. Supp. 3d 418, 426 (S.D.N.Y. 2024) (granting

summary judgment in favor of Mt. Hawley because the insured violated the same two-year suit limitations provision in another Mt. Hawley policy by not filing suit within two years of the date of loss). Plaintiff's argument that *Pizza on 23rd* is somehow distinguishable from this case because it does not relate to New York's statute of limitations further demonstrates Plaintiff's fundamental misunderstanding of New York law. The law is clear—the parties to an insurance contract are free to specify in the contract that the limitations period runs from the date of loss, not the date of breach. That is exactly what happened in *Pizza on 23rd* and in this case.

None of the cases cited by Plaintiff support its tortured interpretation of the Policy. In fact, they do just the opposite. For example, the following quote from *Anderson v. Allstate Insurance Company* is both instructive and directly on point:

> Although the statute of limitations period applicable to a breach of contract cause of action is ordinarily six years . . . it is well settled that parties to a contract may agree, in writing, that any suit be commenced within a shorter period of time . . . . Moreover, the statute of limitations on a breach of insurance contract cause of action generally starts to run on the date that coverage is disclaimed by the insurer . . . ; however, the parties to an insurance contract are likewise free to include distinct language in their agreement demonstrating that they intend for the applicable limitations period to run from the date of the underlying loss as opposed to the date of the disclaimer of coverage . . . .

171 A.D.3d 1331, 1332-33 (N.Y. App. Div. [3rd Dep't] 2019) (internal citations omitted) (emphasis added). This is precisely the situation here. The Policy contains the two-year suit limitation provision demonstrating the Parties' intent for the limitations period for any legal action against Mt. Hawley (not just claims for breach of contract) to run for two years from the date of loss rather than the date Mt. Hawley disclaimed coverage.

Plaintiff cites various other cases to support its argument that a breach of contract action accrues at the time of the breach. (*See* Opposition at ECF Pages 7-8 of 19). As explained above, that argument is simply not relevant here because this case involves a contractual suit limitations

provision that clearly states that the limitations period runs from the date of loss, not the date of the breach.

II. The Policy's New York choice of law provision clearly applies to all of Plaintiff's claims in this lawsuit, including Plaintiff's claim for "bad faith" claim handling. Therefore, Plaintiff's Oklahoma Claims fail.

As an initial matter, Plaintiff does not dispute that this Court, sitting in diversity in the State of New York, must apply New York's choice of law rules. (*See* Opposition at ECF Page 9 of 19; Motion at 15-16). Plaintiff likewise does not contest the fact that New York General Obligations Law Section 5-1401 applies to the Policy because the limits of insurance exceed $250,000, effectively ending any choice of law inquiry and mandating the enforcement of the Policy's New York choice of law provision. (*See generally*, Opposition; *see also* Motion at ECF Page 16-17).

Instead, Plaintiff erroneously contends that its "extracontractual" claims for "bad faith" claim handling under Oklahoma law somehow fall outside of the scope of the Policy's New York choice of law provision. As stated above, the provision explicitly covers "all matters arising out of or relating to this Policy" including "claim handling and any other performance in connection with this Policy." Plaintiff itself admits that "Plaintiff's extracontractual causes of action arise from Defendant's conduct in adjusting and denying the claim …" and that "[t]he extracontractual claims sound in tort and arise from Defendant's claims handling conduct." (Opposition at ECF Pages 10-11 of 19). Accordingly, these claims fall squarely within the scope of the provision and, therefore, are governed by New York law, not Oklahoma law. Once again, Plaintiff's strained "interpretation" simply ignores the actual language of the Policy.

Plaintiff relies on a single outlier opinion to support its erroneous position regarding the scope of the Mt. Hawley choice of law provision: *Danaby Rentals, Inc. v. Mt. Hawley's Insurance Company*, No. 24-CV-3481, 2026 WL 440758 (S.D.N.Y. Feb. 17, 2026). As a preliminary matter, the Court need not even address *Danaby* because it involved a different New York choice of law

provision with different language. Here, the Policy's choice of law provision is even more expansive and specifically includes "claim handling and any other performance in connection with this Policy." *But see Danaby*, 2026 WL 440758, at *2 (analyzing choice of law clause providing that "[a]ll 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 (notwithstanding New York's conflicts of law rules).").

The overwhelming majority of courts in this District have routinely held that the same choice of law language at issue in *Danaby* clearly encompasses "bad faith" claims (and therefore dismissed out-of-state "bad faith" claims). *See, e.g., Webber Commercial Properties, LLC v. Mt. Hawley Ins. Co.*, No. 24-CV-6834, 2025 WL 3501635, at *5 (E.D.N.Y. Dec. 7, 2025) (dismissing Florida "bad faith" claims based upon the same New York choice of law language at issue in *Danaby*); *AMVS, Inc. v. Mt. Hawley Ins. Co.*, No. 22-CV-10782, 2025 WL 278438, at *6 (S.D.N.Y. Jan. 23, 2025) (dismissing "bad faith" claims under the Texas Insurance Code based upon the same New York choice of law language at issue in *Danaby*); *U.S. Rubber Corp. v. Mt. Hawley Ins. Co.*, No. 23-CV-7618, 2024 WL 5268848, at *3 (S.D.N.Y. Dec. 31, 2024) (dismissing "bad faith" claims under the Texas Insurance Code based upon the same New York choice of law language at issue in *Danaby*); *Esplanade 2018 Partners, LLC v. Mt. Hawley Ins. Co.*, No. 23-CV-3592 (DEH), 2025 WL 844021, at *5 (S.D.N.Y. Mar. 18, 2025) (dismissing Louisiana "bad faith" claims based upon the same New York choice of law language at issue in *Danaby*); *Ram Krishana, Inc. v. Mt. Hawley Ins. Co.*, No. 22-CV-03803, 2024 WL 1657763, at *5 (S.D.N.Y. Apr. 17, 2024) (dismissing Louisiana "bad faith" claims based upon the same New York choice of law language at issue in *Danaby* because they "clearly" fell within the scope of the policy's New York choice of law provision).

Having established that all of Plaintiff's claims in this lawsuit, including its claim for "bad faith" claim handling, fall squarely within the scope of the New York choice of law provision, it is likewise axiomatic that Plaintiff may only seek relief herein under New York law, not Oklahoma law. *See Webber*, 2025 WL 3501635, at *5 ("The provision therefore reveals the parties' intent and permits only one reasonable interpretation: all matters arising under the policy—including whether Insurers performed in bad faith—must be determined in accordance with the laws of New York, not Florida."). Therefore, even putting aside the fact that these claims are barred by the two-year suit limitation provision, both of Plaintiff's Oklahoma claims for breach of contract and "bad faith" claim handling independently fail because they are not cognizable under New York law.

Interestingly, Plaintiff makes a passing reference to the fact that its claims for violations of "the Oklahoma Insurance Code and Deceptive Trade Practices Act" are not subject to the New York choice of law provision. This statement is certainly curious as Plaintiff did not assert any Oklahoma statutory causes of action in its Complaint. Of course, even if it had, those claims would still arise from Mt. Hawley's "claim handling" and "performance" under the Policy and therefore fall within the scope of the New York choice of law provision.

III. All of Plaintiff's claims in this lawsuit, including Plaintiff's New York claim for breach of the implied covenant of good faith and fair dealing, are barred by the Policy's two-year suit limitation provision.

As explained in the Motion, Plaintiff's entire Complaint should be dismissed for violating the Policy's two-year suit limitation provision. As noted above, Plaintiff has voluntarily dismissed its GBL Section 349 claim and its request for attorney's fees (which, as explained in the Motion, fail as a matter of law both under the suit limitation provision and also for independent reasons).

Moreover, New York does not recognize a separate, independent cause of action for bad faith denial of insurance coverage. (*See* Motion at ECF Page 26 (citing *Woodhams v. Allstate Fire & Cas. Co.*, 748 F. Supp. 2d 211, 223 (S.D.N.Y. 2010)). Under New York law, claims for breach

of the implied covenant of good faith and fair dealing are themselves contract claims—not independent torts—subject to the same limitations period as contract claims. *See 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).

Accordingly, Mt. Hawley is entitled to an order dismissing the entire lawsuit because Plaintiff already admittedly filed suit outside of the Policy's contractual limitations period.

IV. The Parties' claims for declaratory judgment will be necessarily subsumed within its ruling on this Motion.

Finally, in an abundance of caution, Mt. Hawley would point out that, in ruling on this Motion, the Court must necessarily consider and reject Plaintiff's claim seeking a declaration that the Policy's New York choice of law provision and two-year suit limitation provision are somehow unenforceable. Likewise, the Court should grant Mt. Hawley's claim for declaratory relief that Mt. Hawley 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.

CONCLUSION

For the reasons set forth above and in the Motion, New York law governs all claims and defenses in this lawsuit, 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.

Respectfully submitted,

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WORD COUNT CERTIFICATION

This is to certify that this reply brief's word count is below 3,500 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 brief, the brief contains 3,081 words excluding the 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 12th day of March, 2026.

/s/ Greg K. Winslett

Greg K. Winslett