UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW M. PEARSON,

Plaintiff,

v.

ACE AMERICAN INSURANCE COMPANY, a/k/a CHUBB,

Defendant.

Case No. 7:26-CV-01353 (KMK)

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION FOR PARTIAL DISMISSAL OF THE COMPLAINT (ECF NO. 21)

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Plaintiff Matthew M. Pearson files this memorandum of law in opposition to the motion of Defendant ACE American Insurance Company, also known as CHUBB ("ACE"), to partially dismiss (ECF No. 21 ("Motion")) the Complaint (ECF No. 2).

I. <u>INTRODUCTION</u>

ACE portrays this action as a routine coverage dispute. It is not. ACE denied a covered loss under the parties' replacement value insurance policy (the "Policy") for the April 2, 2022, to April 2, 2023, term. (ECF No. 2 ¶¶ 8–14, 43.) It then directed its own insured into a survey process that, as pleaded, was compromised from the outset. (*See* ECF No. 2 ¶ 47.) Every surveyor on the survey panel was tied to ACE. (ECF No. 2 ¶¶ 55, 58.) The governing survey clause was withheld from Mr. Pearson, and ten months elapsed in silence despite Mr. Pearson's requests for progress. (ECF No. 2 ¶¶ 50, 59–60.) ACE's improper denial of coverage followed by its injurious conduct during the survey process are two wrongs, not one, and Mr. Pearson is permitted to pursue claims for both.

ACE does not move to dismiss the breach-of-contract claim (Count II). It moves to dismiss only the declaratory-judgment claim (Count I) and the good-faith claim (Count III), contending that each duplicates the contract claim. (ECF No. 23 at 7–11.) Its Motion also advances two theories that its pre-motion letter never raised: that the Policy's survey clause authorized the conduct Mr. Pearson challenges (ECF No. 23 at 12–14), and that Count III is insufficiently pleaded under *Twombly* and *Iqbal* (ECF No. 23 at 15–16). Again, ACE's pre-motion letter raised neither theory, contrary to Judge Karas's requirement that such a letter set forth "each specific argument and relevant case law" supporting the anticipated motion. *See* Individual Rules of Practice of Hon. Kenneth M. Karas, Rule II.A; (*see also* ECF No. 11.) Ace's arguments lack merit.

Count III does not rest on the denial of coverage. It rests on the manner in which ACE conducted the claims process. ACE: declined to inspect the disassembled engines (ECF No. 2 ¶¶ 39–40); assembled a survey panel beholden to itself (ECF No. 2 ¶¶ 55, 58); withheld the survey clause while directing the process it governed (ECF No. 2 ¶ 50); and allowed ten months to pass without communication or progress on the survey process, despite Mr. Pearson's requests for progress (ECF No. 2 ¶¶ 59–60). That conduct caused its own harm, and New York law has long recognized that an insurer's handling of a claim is a wrong distinct from its coverage decision. *See* § IV.A., *infra*.

The survey clause affords ACE no refuge. Mr. Pearson does not dispute that the survey clause exists. (ECF No. 2 ¶ 51.) He plausibly alleges that ACE's conduct during the survey process violated the implied covenant of good faith and fair dealing. The implied covenant governs the manner in which a party exercises the powers a contract confers. *See* § IV.B., *infra*. The survey clause does not authorize concealment, conflicts, and delay, and nothing in the Policy or the survey clause is inconsistent with a duty to conduct the survey in good faith. ACE's contrary theory, that the survey was authorized and properly conducted, rests on the declaration of its counsel and an exhibit not included with the Complaint (ECF Nos. 22; 22-2), material the Court may not consider on a Rule 12(b)(6) motion and that cannot resolve disputed facts against the Complaint. *See* § IV.B., *infra*.

Count III is plausibly pleaded. The Complaint does not rest on labels; it alleges facts. The two "opposing" surveyors had worked together for twenty years. (ECF No. 2 ¶ 56.) One of them told Mr. Pearson that ACE "is a client of mine." (ECF No. 2 ¶ 57.) Every member of the panel worked for ACE. (ECF No. 2 ¶ 55.) ACE refused to examine the engines, and withheld the document containing the survey clause. (ECF No. 2 ¶¶ 39–40, 50.) Taken as true, those allegations state a plausible claim. *See* § IV.C., *infra*.

On Count I, the Complaint alleges that the Policy remains in force and that ACE "has continued to insure and presently insures the Vessel." (ECF No. 2 ¶¶ 14, 80.) On this Motion, that allegation is taken as true. The Court's declaration that latent grounding damage is covered under the Policy would settle the parties' rights going forward, and a retrospective award for past repairs cannot accomplish that. The claim therefore serves an independent purpose. *See* § IV.D., *infra*.

Mr. Pearson respectfully requests that the Court deny the Motion. In the alternative, if the Court dismisses any portion of the Complaint, it should do so without prejudice and with leave to amend.

II. BACKGROUND

ACE has insured Mr. Pearson's 2003 Sea Ray 560 Sedan Bridge (the "Vessel") since 2010 under a Chubb Masterpiece replacement-value policy, including the April 2, 2022, to April 2, 2023, term at issue here. (ECF No. 2 ¶¶ 8–11.) The Policy insures "ensuing covered loss due to fire, explosion, sinking, demasting, collision or stranding," and it covers "damage to engines." (ECF No. 2 ¶ 13.) ACE continues to insure the Vessel. (ECF No. 2 ¶¶ 14, 80.)

A. The Grounding and the Latent Engine Damage

On April 28, 2022, the Vessel ran hard aground in North Carolina waters at approximately 25 knots. (ECF No. 2 ¶ 15.) The impact was violent. (*Id.*) It stalled the engines and deprived them of the cooling period the manufacturer requires. (*Id.*) Mr. Pearson promptly notified ACE, filed a claim, and identified his concern about engine damage from the impact. (ECF No. 2 ¶ 20.) Early inspections revealed warning signs, including engine alarms and heavy white smoke, that indicated internal distress but could not yet be confirmed. (ECF No. 2 ¶¶ 17–18, 24.)

Following his mechanics' advice, Mr. Pearson operated the Vessel for fewer than 50 hours, in low-stress conditions, before a major service. (ECF No. 2 ¶¶ 24, 26.) In December 2024, a certified MAN diesel dealer, Heavy Duty Systems ("HDS"), disassembled the engines and discovered the damage: 17 of 20 cracked cylinder heads, failed leak-down tests, and coolant intrusion across all 20 cylinder liners. (ECF No. 2 ¶¶ 32–33.) The pattern was consistent with a single, high-intensity "heat soak" during the grounding rather than ordinary wear and tear. (ECF No. 2 ¶¶ 34–35.) To fund the repairs, Mr. Pearson borrowed approximately $500,000 from his retirement savings. (ECF No. 2 ¶ 36.)

B. <u>ACE's Denial and the Compromised Survey Process</u>

Mr. Pearson advised ACE that the engines were disassembled and available for inspection, and he deferred repairs so that ACE could examine them. (ECF No. 2 ¶ 39.) ACE declined and sent no one. (ECF No. 2 ¶ 40.) On February 18, 2025, ACE denied Mr. Pearson's claim. (ECF No. 2 ¶ 43.)

ACE then informed Mr. Pearson that, if he wished to contest the denial, he was required to enter a "survey process" under a "survey clause." (ECF No. 2 ¶ 47.) Yet when he requested, repeatedly, a complete copy of the Policy containing that clause, ACE would not provide it. (ECF No. 2 ¶ 50.) ACE set the rules of the survey process while withholding the document that defined them. (*Id.*) The Policy attached to the Complaint bears this out. Its forms schedule lists Form RM240000, the "Policy Terms" form in which the survey clause appears, as the sole operative vessel form omitted from Mr. Pearson's copy of the Policy; every other form carries the asterisk that "[d]enotes form is included with Insured copy." (ECF No. 2-1 at 11.)

The resulting survey panel was composed of three people, and each had worked for ACE. (ECF No. 2 ¶¶ 52–55.) Mr. Pearson believed that Ken Weinbrecht, one of the surveyors on the panel, would serve as his own independent surveyor and expert advocate. (ECF No. 2 ¶ 52.) Mr. Weinbrecht told Mr. Pearson, "I am not going to charge you unless I get something for you out of [ACE]." (ECF No. 2 ¶ 52.) Mr. Weinbrecht later admitted to the umpire, Bill Trenkle, that he and ACE's surveyor, George Stafford, "have had a great relationship for over twenty years," and described ACE as "a client of mine." (ECF No. 2 ¶¶ 56–57.) The umpire, Mr. Trenkle, also worked for ACE. (ECF No. 2 ¶¶ 54–55.) ACE disclosed none of this to Mr. Pearson. (ECF No. 2 ¶ 58.)

The process then lay dormant for ten months. Mr. Pearson requested updates and received none. (ECF No. 2 ¶¶ 59–60.) Weinbrecht never filed the report he represented to Mr. Pearson that he would file on his behalf. (ECF No. 2 ¶ 61.) When the umpire finally issued a report on February 9, 2026, a full year after the process began, it "mirrored [ACE]'s original denial." (ECF No. 2 ¶ 65.) It opined on causation, which the survey clause does not permit, and it never valued the loss, which is all the clause permits. (ECF No. 2 ¶ 66.) Moreover, among other failures, ACE's surveyor, Mr. Stafford, never visited HDS to examine the Vessel's 17 cracked cylinder heads. (ECF No. 2 ¶ 69.)

The Complaint pleads three claims: declaratory judgment (Count I), breach of contract (Count II), and breach of the implied covenant of good faith and fair dealing (Count III). ACE moves to dismiss only Counts I and III.

III. LEGAL STANDARD

On a Rule 12(b)(6) motion, the Court accepts the well-pleaded allegations as true and draws every reasonable inference in the plaintiff's favor. *Harris v. Mills*, 572 F.3d 66, 71 (2d Cir. 2009). A complaint survives if its "factual content . . . allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009);

see Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Plausibility "is not akin to a probability requirement." *Iqbal*, 556 U.S. at 678. The plaintiff need not prove his case; he need only allege enough to permit discovery to proceed. *Twombly*, 550 U.S. at 556. Legal conclusions receive no presumption of truth, but factual allegations do, and the Court considers them together. *Harris*, 572 F.3d at 72. On such a motion, the Court's review is generally confined to the Complaint, the documents attached to or incorporated by reference in it, documents integral to it, and matters subject to judicial notice. *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152–53 (2d Cir. 2002). If matters outside the pleadings are presented and not excluded, the motion must be converted to one for summary judgment, with notice and an opportunity for discovery. Fed. R. Civ. P. 12(d).

IV. ARGUMENT

A. Count III Is Not Duplicative Because It Rests on Distinct Claim-handling Conduct and Seeks Distinct Damages

ACE's principal challenge to Count III is that it duplicates the contract claim. (ECF No. 23 at 8.) That contention misreads both the Complaint and the governing law. New York precludes a separate good-faith claim only where it rests "upon the same facts" as the contract claim. *Harris v. Provident Life & Accident Ins. Co.*, 310 F.3d 73, 81 (2d Cir. 2002). Where the good-faith claim rests on different facts and seeks different damages, it survives. *See Endemann v. Liberty Ins. Corp.*, 390 F. Supp. 3d 362, 379 (N.D.N.Y. 2019) (declining to dismiss an implied-covenant claim as duplicative where it pleaded conduct different from the breach claim and sought different relief).

This case falls on the latter side of that line. In *Ruiz v. Liberty Mutual Fire Ins. Co.*, No. 19 Civ. 4399 (VB), 2019 WL 7293377, at *2 (S.D.N.Y. Dec. 30, 2019), the court sustained a good-faith claim against an insurer because it turned on distinct facts concerning the insurer's conduct and sought "additional damages" beyond the withheld payment. The same is true here.

New York courts "do recognize that an insurance company's handling of a claim can give rise to a breach of the duty of good faith and fair dealing." *Fishberg v. State Farm Fire & Cas. Co.*, No. 20 Civ. 6664 (LJL), 2021 WL 3077478, at *3 (S.D.N.Y. July 20, 2021) (citing *Bi-Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y.*, 10 N.Y.3d 187 (2008), and *D.K. Property, Inc. v. National Union Fire Ins. Co. of Pittsburgh*, 168 A.D.3d 505 (1st Dep't 2019)). *Fishberg* held that such a claim "cannot be dismissed as duplicative of" the contract claim where the conduct at issue is the handling of the claim rather than the coverage decision. *Id.* at *3–4. Here, the Policy nowhere requires ACE to conduct the survey in good faith; the implied covenant supplies that obligation.

Count II concerns ACE's wrongful denial of coverage. Count III concerns the manner in which ACE conducted the dispute: it declined to inspect the disassembled engines Mr. Pearson offered (ECF No. 2 ¶¶ 39–40); it assembled a panel tied to ACE at every seat, including two "opposing" surveyors who had worked together for twenty years and an umpire who worked for ACE (ECF No. 2 ¶¶ 54–58); it withheld the survey clause while directing the process (ECF No. 2 ¶ 50); and it permitted the process to remain idle for ten months (ECF No. 2 ¶¶ 59–61). Wrongfully denying a claim is one injury; administering a compromised survey process is a separate one.

The damages differ as well. Count II seeks the policy benefits, namely the cost to repair or replace the engines. (ECF No. 2 ¶¶ 81, 94.) Count III seeks the distinct harm ACE's conduct caused, including the "unnecessary expenses" of a corrupted survey and the loss of a fair, neutral, and timely review. (ECF No. 2 ¶¶ 105–106.) Because Count III "pleads conduct by Defendant different than alleged in the breach of contract claim," and because Mr. Pearson "may be entitled to different relief," it "is not duplicative of the breach of contract claim." *Endemann*, 390 F. Supp. 3d at 379.

ACE's authorities do not require dismissal because the decisions involved a good-faith claim that merely restated a denial of benefits. Its first-party cases, *Scottsdale Ins. Co. v. McGrath*, 549 F. Supp. 3d 334, 344 n.2 (S.D.N.Y. 2021), *Vitrano v. State Farm Ins. Co.*, No. 08 CV 00103 (JGK), 2008 WL 2696156, at *3 (S.D.N.Y. July 7, 2008), *Ticheli v. Travelers Ins. Co.*, No. 1:14-CV-00172, 2014 WL 12587066, at *3 (N.D.N.Y. Dec. 23, 2014), and *White v. State Farm Mutual Automobile Ins. Co.*, No. 3:24-CV-0613 (GTS/TWD), 2025 WL 391078, at *6 (N.D.N.Y. Feb. 4, 2025), each dismissed a claim that merely recast a failure to pay policy benefits as a tort. They state the rule, but they do not reach conduct of the kind alleged against ACE.

The general contract authorities ACE cites fare no better. Each holds that a good-faith claim is redundant when it rests on the same conduct as the breach-of-contract claim. *See Cruz v. FXDirectDealer, LLC*, 720 F.3d 115, 125 (2d Cir. 2013) (affirming dismissal of an implied-covenant claim that rested on the same facts as the contract claim); *Great Lakes Reinsurance (UK) SE v. Herzig*, 413 F. Supp. 3d 177, 184–85 (S.D.N.Y. 2019) (implied-covenant counterclaim redundant where its allegations were not distinct from the factual predicate for the contract counterclaim); *County of Orange v. Travelers Indemnity Co.*, No. 7:13-cv-06790, 2014 WL 1998240, at *3 (S.D.N.Y. May 14, 2014) (dismissing a good-faith claim as duplicative where the alleged delay and failure to investigate addressed "the same ultimate grievance" as the contract claim); *New York Univ. v. Continental Ins. Co.*, 87 N.Y.2d 308, 319–20 (1995) (claim recasting the insurer's investigation and denial of the claim in tort language held "duplicative" of the contract claim). That principle is sound, but it reaches only a covenant claim that duplicates the contract claim. *Great Lakes* is ACE's closest case, for it too arose from a vessel-repair dispute; but the counterclaim there alleged only a failure to cover repairs, coextensive with the coverage claim, not the separate claim-handling misconduct alleged here. 413 F. Supp. 3d at 184–85.

Count III does not rely on ACE's improper denial of coverage, as Count II does. The claim rests on the manner in which ACE conducted the separate survey process, the sole purpose of which was to value the damage to the Vessel, and it seeks the distinct costs Mr. Pearson incurred because of ACE's conduct during the survey process. Therefore, because Count III alleges facts and damages separate from those supporting Count II, it is not duplicative. *See Ruiz*, 2019 WL 7293377, at *2; *Fishberg*, 2021 WL 3077478, at *3; *Endemann*, 390 F. Supp. 3d at 379 ("Because the breach of the implied covenant of good faith and fair dealing claim pleads conduct by Defendant different than alleged in the breach of contract claim, and because Plaintiff may be entitled to different relief than allowed under a breach of contract claim . . . the claim is not duplicative of the breach of contract claim. Thus, on this basis, the claim will be allowed to proceed.").

B. <u>The Survey Clause and Its "Without Prejudice" Text Do Not Bar Count III</u>

ACE's motion depends on material this Court may not consider. To argue that the survey process was authorized and properly conducted, ACE relies on the declaration of its counsel and the exhibits appended to it. (*See* ECF No. 22.) On a Rule 12(b)(6) motion, review is confined to the Complaint, the documents attached to or incorporated by reference in it, documents integral to it, and matters subject to judicial notice. *Chambers*, 282 F.3d at 152–53. An attorney's declaration is none of these. A district court "errs when it 'consider[s] affidavits and exhibits submitted by'" the defendant in ruling on such a motion. *Friedl v. City of New York*, 210 F.3d 79, 83–84 (2d Cir. 2000). Presented with matters outside the pleadings, the Court must either disregard them and decide the Motion on the Complaint alone or convert the motion to one for summary judgment and afford the parties discovery. *Id.* at 83; Fed. R. Civ. P. 12(d). ACE cannot use its counsel's declaration to establish contested facts about the survey, or to contradict the Complaint, whose allegations are taken as true. Furthermore, the only policy document properly before the Court, the copy provided to Mr. Pearson and attached to the Complaint, omits the survey clause. (ECF No. 2-1 at 11.) ACE may not introduce evidence in this posture through its own declaration and then invoke it to attempt defeating Count III. Accordingly, Mr. Pearson respectfully requests that the Court disregard Ms. Eridania Perez's declaration and Exhibit B attached to it when deciding the Motion. (*See* ECF Nos. 22; 22-2.)

Even if the Court considers the extra-Complaint material ACE filed with the Motion, ACE's second theory, raised for the first time in the Motion, is unavailing. ACE contends that the Policy "expressly authorized" the survey and, through its "without prejudice" language, preserved ACE's coverage position, such that the implied covenant of good faith and fair dealing cannot reach ACE's conduct. (*See* ECF No. 23 at 12–14.) That theory misapprehends both the implied covenant and Count III.

Mr. Pearson does not dispute the text of the survey clause. It speaks for itself. His claim is that ACE, having invoked the survey clause, steered a compromised survey process that injured Mr. Pearson separately from ACE's breach of contract for wrongful denial of coverage in Count II. Where a contract commits a matter to one party's discretion, the implied covenant of good faith and fair dealing carries "a promise not to act arbitrarily or irrationally in exercising that discretion." *Dalton v. Educ. Testing Serv.*, 87 N.Y.2d 384, 389 (1995). The implied covenant adds nothing to the express terms and contradicts none of them; it polices the manner in which a party wields the discretion a contract confers, forbidding conduct that would destroy the other party's right to "the fruits of the contract." *Id.* For that reason, New York treats an insurer's handling of a claim, as distinct from its coverage determination, as conduct the implied covenant may reach. *Fishberg*, 2021 WL 3077478, at *3.

The "without prejudice" text in the survey provision cannot bear the weight ACE places upon it. By its terms, it preserves ACE's rights and coverage position: ACE does not waive its defenses by agreeing to a survey. (ECF No. 22-2 at O-4.) It says nothing about the manner in which the survey must be conducted. It does not permit ACE to assemble a panel riddled with undisclosed conflicts, to withhold the governing Policy while directing the process, or to allow the matter to languish for ten months.

ACE's own authority confirms the point. *Times Mirror Magazines, Inc. v. Field & Stream Licenses Co.*, 294 F.3d 383, 394–95 (2d Cir. 2002), holds only that a court may not imply a term "inconsistent with" the contract's express terms. A duty to conduct the survey honestly, to disclose material conflicts, and to avoid unreasonable delay contradicts nothing in the survey clause. It reinforces it. The survey clause contemplates a neutral, three-surveyor valuation, and construing the implied covenant to require good-faith administration enforces the neutrality the clause presupposes. Such an obligation is consistent with the Policy's other terms rather than inconsistent with them, which *Times Mirror* permits.

Nor did the survey clause "expressly authorize" the conduct at issue. The clause authorizes a survey to determine "the amount of loss." (ECF No. 22-2 at O-4.) It does not authorize an umpire to opine on causation, as Mr. Trenkle did. (ECF No. 2 ¶ 66.) It does not authorize the concealment of the surveyors' financial ties to ACE. (ECF No. 2 ¶¶ 55–58.) And it does not authorize ACE to withhold the document that defines the process. (ECF No. 2 ¶ 50.) Conduct the contract never sanctioned cannot be immunized as "expressly authorized," least of all a clause the Policy's own forms schedule shows ACE did not furnish to Mr. Pearson. (ECF No. 2 ¶ 50; ECF No. 2-1 at 11.)

In any event, whether the "without prejudice" clause bars any portion of Count III is a fact-bound question, not one suited to resolution on the pleadings. The Court draws every inference in

Mr. Pearson's favor here, and the natural inference from the allegations in the Complaint is that ACE did not conduct the survey in good faith. *Endemann*, 390 F. Supp. 3d at 379. ACE's second theory supplies no basis for dismissal.

C. <u>Count III Pleads a Plausible Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing</u>

ACE's final argument concerning Count III, also raised for the first time in its Motion, is that Count III rests on "conclusory" allegations that fail *Twombly* and *Iqbal*. (ECF No. 23 at 15–16.) The Complaint, however, pleads facts, not "labels and conclusions." *Iqbal*, 556 U.S. at 678. Plausibility "is not akin to a probability requirement," and Mr. Pearson need not prove his case at this stage. *Id.*

Consider the Complaint's allegations. The two "opposing" surveyors, Mr. Weinbrecht and Mr. Stafford, "have had a great relationship for over twenty years." (ECF No. 2 ¶ 56.) Mr. Weinbrecht, presented to Mr. Pearson as his own advocate, told him, "I am not going to charge you unless I get something for you out of [ACE]," and later described ACE as "a client of mine." (ECF No. 2 ¶¶ 52, 57.) Every member of the panel worked for ACE. (ECF No. 2 ¶ 55.) Mr. Weinbrecht's two-decade alignment with Mr. Stafford and ACE went undisclosed (ECF No. 2 ¶¶ 56–58), and that the umpire was chosen by the two conflicted surveyors themselves (ECF No. 2 ¶ 53). ACE declined to inspect the disassembled engines. (ECF No. 2 ¶¶ 39–40.) ACE withheld the survey clause while directing the process even after Mr. Pearson requested a copy of it. (ECF No. 2 ¶ 50.) The survey process continued for ten months without progress or communication. (ECF No. 2 ¶¶ 59–61.) A report Mr. Weinbrecht authored in February 2025 remained concealed from Mr. Pearson until December 2025. (ECF No. 2 ¶ 56.) And the umpire opined on causation, beyond the scope of the survey clause, while never valuing the loss (which is the sole purpose of the survey process). (ECF No. 2 ¶ 66.) These are factual allegations, not conclusions. As pleaded, the survey was ACE's process to run, not Mr. Pearson's. On these facts, read in Mr. Pearson's favor, a panel wholly beholden to ACE, assembled through a process ACE directed while concealing its terms, plausibly reflects a claims process ACE did not conduct in good faith.

ACE leans on *Koffler v. Cincinnati Ins. Co.*, 239 A.D.3d 840 (2d Dep't 2025), but that decision cuts against it. *Koffler* holds that an insurer's valuation "will not be set aside" "[a]bsent proof of fraud, bias, or bad faith," and it dismissed the insured's challenge only because the complaint "failed to sufficiently allege" that the award was the product of such misconduct. *Id.* at 842. Two consequences follow, both favoring Mr. Pearson. First, bias or bad faith in a policy's valuation process is a recognized ground to set the result aside, which defeats ACE's premise that the survey clause placed the process beyond the implied covenant's reach. *See id*. Second, the defect in *Koffler* was the absence of specifics, and Mr. Pearson has supplied them: the twenty-year relationship between his own surveyor and ACE's; Mr. Weinbrecht's admission that ACE "is a client of mine"; a panel that answered to ACE; the concealment of the surveyors' ties; the withheld survey clause; and an umpire who opined on causation but not valuation, a question the survey clause did not commit to him. (ECF No. 2 ¶¶ 52, 56–58, 66.) These are the facts of "fraud, bias, or bad faith" that *Koffler* found missing. *Koffler* did dismiss the insured's implied-covenant claim as duplicative, but only because that plaintiff alleged nothing beyond the insurer's undervaluation of the loss; Mr. Pearson alleges distinct claim-handling misconduct and distinct damages. *See* § IV.A., *supra*.

ACE's reliance on the *Iqbal*/*Twombly* pleading standard supports the opposite conclusion. *Harris v. Mills* withholds the presumption of truth from legal conclusions but leaves well-pleaded facts intact. 572 F.3d at 72. The allegations supporting Count III in the Complaint are facts and not legal conclusions. The standard on a motion to dismiss is plausibility, not proof, and Count III satisfies it.

At most, ACE identifies matters it believes Mr. Pearson cannot prove. That is an argument for a dispositive motion or trial, after full discovery. For present purposes, the Complaint's specific allegations carry Count III "across the line from conceivable to plausible," *Twombly*, 550 U.S. at 570, and the claim should proceed.

D. <u>Count I Is Not Duplicative and Serves a Useful, Forward-Looking Purpose</u>

ACE contends that Count I merely restates the contract claim in Count II. (ECF No. 23 at 7.) Whether to entertain a declaratory judgment claim lies within the Court's discretion. *See Dow Jones & Co. v. Harrods Ltd.*, 346 F.3d 357, 359 (2d Cir. 2003). Dismissal at the pleading stage is inappropriate where the declaration would accomplish something a damages claim cannot. *See Starr Indem. & Liab. Co. v. Exist, Inc.*, No. 23 Civ. 786 (LJL), 2023 WL 4029821, at *4 (S.D.N.Y. June 14, 2023). Courts in this District consider "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." *Federal Ins. Co. v. SafeNet, Inc.*, 758 F. Supp. 2d 251, 261–62 (S.D.N.Y. 2010). Both are satisfied here.

The declaratory claim is not a mirror of a demand for money. The Complaint alleges that ACE "has continued to insure and presently insures the Vessel," (ECF No. 2 ¶¶ 14, 80), and the Court must accept that allegation as true on this Motion. A ruling that latent engine damage from a covered grounding constitutes a "covered loss" fixes the parties' rights under a relationship that continues. New York law permits a declaratory action against an insurer "with respect to jural relations, either as to present or prospective obligations." *Plaza Restoration, Inc. v. Nationwide Mut. Ins. Co.*, 34 A.D.3d 436, 437 (2d Dep't 2006).

That is particularly so where the insurer's obligation "is ongoing and where the full value of a claim has not yet accrued," for there "a declaratory judgment pursues a useful forward-looking function." *Starr Indem.*, 2023 WL 4029821, at *4. Such is the case here. The Policy remains in force, and the Complaint alleges that ACE continues to insure the Vessel. (ECF No. 2 ¶¶ 14, 80.) A damages verdict on the completed engine repairs would resolve only that past loss; it would not settle whether grounding damage of this kind is a "covered loss" under a Policy that still governs the parties. A declaration answers that recurring question and binds the parties prospectively, as a retrospective award on past repairs cannot.

ACE's authorities do not compel a different result. In *Apple Records, Inc. v. Capitol Records, Inc.*, 137 A.D.2d 50, 54 (1st Dep't 1988), the plaintiffs conceded that their declaratory claims "merely seek a declaration of the same rights and obligations" as their contract claims. Mr. Pearson makes no such concession. In *U.S. Bank Nat'l Ass'n ex rel. Lima Acquisition LP v. PHL Variable Ins. Co.*, Nos. 12 Civ. 6811 (CM)(JCF), 13 Civ. 1580 (CM)(JCF), 2014 WL 998358, at *9 (S.D.N.Y. Mar. 14, 2014), the court dismissed a declaratory claim whose requested declarations "involve[d] conduct so similar to" the plaintiff's breach-of-contract claim that they added nothing, and it held that the prospective character of the relief did not save a claim otherwise coextensive with the contract claim. In *Deutsche Alt-A Securities Mortgage Loan Trust v. DB Structured Products, Inc.*, 958 F. Supp. 2d 488, 507 (S.D.N.Y. 2013), the declaratory claim sought reimbursement of the enforcement expenses the plaintiff was already entitled to recover through its coercive claims on the same agreements, and the court dismissed it as "duplicative of its other claims." None of these circumstances is present here. Mr. Pearson's declaratory judgment claim is not a coextensive, backward-looking money item; it seeks a forward-looking coverage determination under a Policy that remains in force, and ACE's obligations under it are live and disputed. No adequate alternative remedy reaches that forward-looking question: a damages award on the completed repairs would resolve only the past loss, leaving the parties' coverage rights under the still-active Policy unsettled.

The *SafeNet* factors favor retaining Count I, and the claim should be permitted to proceed.

V. CONCLUSION

For the foregoing reasons, Mr. Pearson respectfully requests that the Court deny ACE's motion for partial dismissal (ECF No. 21) in its entirety and grant such other and further relief as the Court deems just and proper. Should the Court grant any portion of the motion, Mr. Pearson respectfully requests that the dismissal be without prejudice and with leave to amend, which should be freely given, particularly as to the survey-authorization and pleading-sufficiency grounds ACE did not raise in its pre-motion letter. *See* Fed. R. Civ. P. 15(a)(2); *Cruz v. TD Bank, N.A.*, 742 F.3d 520, 523 (2d Cir. 2013).

Dated: July 20, 2026
New York, New York

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF COMPLIANCE

Pursuant to the Honorable Kenneth M. Karas's Individual Rules of Practice II.B, the undersigned certifies that the foregoing Memorandum of Law in Opposition to ACE American Insurance Company's Motion for Partial Dismissal of the Complaint was prepared with a computer in 12-point font, double-spaced, with one-inch margins on all sides, and that it contains 5,217 words as counted by the word-count function of Microsoft Word, exclusive of the caption, table of contents, table of authorities, signature block, and this certificate. The memorandum therefore complies with the 8,750-word limit for memoranda in opposition to motions.

/s/ Nicholas J. Wilson
Nicholas J. Wilson

CERTIFICATE OF SERVICE

I certify that on July 20, 2026, I caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using the CM/ECF system, which will send notice of the filing to all counsel of record.

/s/ Nicholas J. Wilson
Nicholas J. Wilson