UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW M. PLAINTIFF, Plaintiff, -against- ACE AMERICAN INSURANCE COMPANY, a/k/a CHUBB, Defendant.	:	Civil Case No.: 26-CV-01353

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF ACE AMERICAN INSURANCE COMPANY'S MOTION FOR PARTIAL DISMISSAL OF THE COMPLAINT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

PRELIMINARY STATEMENT

Plaintiff's opposition (Dkt. 24) attempts to spin a routine first-party insurance dispute into a narrative of independent tortious misconduct. Stripped of its rhetorical labels, however, the opposition confirms that this case is, and has always been, a singular disagreement over whether a 2022 boat-grounding incident caused latent engine damage covered under the ACE Policy – damage that was not discovered until years after the initial claim was submitted. New York law strictly prohibits plaintiffs from converting a standard breach of contract claim into an independent claim for breach of the implied covenant of good faith and fair dealing. Plaintiff attempts to escape this anti-duplication rule by splitting his claim into "two wrongs": the initial coverage denial, and the subsequent survey process provided by the Policy. But this is a legal fiction.

The alleged flaws in the survey process—such as panel familiarity and administrative delays—all relate to the exact same ultimate grievance: ACE's refusal to pay for Plaintiff's alleged engine repairs. Furthermore, the damages Plaintiff seeks for this purported bad faith consist of the cost associated with participating in a survey process he invoked under the Policy – a process for which the parties agreed to share expenses – and are therefore entirely duplicative of his contract damages (Count II). The so-called "claim handling" allegations are nothing more than Plaintiff's explanation for why ACE denied coverage. They arise from the same nucleus of operative facts as Count II and seek recovery arising from the same alleged denial of benefits. New York courts routinely dismiss such claims as duplicative.

Plaintiff's repeated characterization of the survey process as "compromised", "corrupted", "beholden", "conflicted" relies on conclusions and speculation arising from alleged professional relationships among marine surveyors and from disagreement with the ultimate outcome of the survey process. Such allegations receive no presumption of truth under the plausibility

standards established by *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). At bottom, Plaintiff's theory is that ACE denied coverage; ACE participated in a survey process expressly contemplated by the Policy; the survey process ultimately reached a conclusion consistent with ACE's coverage position; and therefore ACE must have acted in bad faith. New York law does not permit such speculation and conjecture to proceed past the pleading stage.

Likewise, Plaintiff's declaratory judgment Count I serves no independent legal purpose. Plaintiff argues that because the Policy remains active, a declaration is necessary to guide the parties' future behavior. This assumes a highly speculative future scenario where the Vessel suffers an identical accident with identical mechanical results. To the contrary, the Complaint alleges a single historical loss, a completed claim investigation, and a denial issued on February 18, 2025. There is no ongoing future conduct requiring clarification. The breach of contract claim (Count II) will fully and conclusively determine whether the engine damage is a covered loss under the Policy language.

Consequently, Counts I and Count III add nothing to this litigation, remain entirely redundant, and must be dismissed under Rule 12(b)(6).

ARGUMENT

I. COUNT III REMAINS DUPLICATIVE OF THE BREACH OF CONTRACT CLAIM

Plaintiff attempts to distinguish Count III (breach of the implied covenant) by arguing that it challenges ACE's handling of the survey process rather than ACE's denial of coverage. Dkt. 24 at 7, 11-12. This attempted distinction is illusory.

As demonstrated in ACE's moving brief ("Motion"), every allegation identified in the opposition ultimately seeks to challenge ACE's refusal to provide coverage for the claimed engine

damage. Dkt. 23 at 14-16; Perez Decl. Ex. A (Dkt. 22-1) at ¶¶78-94 and ¶¶95-107. Plaintiff repeatedly alleges that ACE deprived him of benefits allegedly owed under the Policy and prevented him from obtaining the coverage he claims was due. Dkt. 22-1 at ¶¶103, 106. The alleged flaws in the survey process (refusal to inspect, surveyor alignment, and delay) all serve the exact same underlying grievance: ACE's ultimate decision to deny coverage for the engine repairs. Because the survey process was merely the contractual mechanism used to evaluate the claim, any alleged mismanagement of that process is inextricably intertwined with contract performance itself. Dkt. 23.

New York law is clear that an implied-covenant claim must be dismissed where, as here, it arises from the same facts and seeks the same essential damages as the breach of contract claim. Dkt. 23 at 14-15. Plaintiff cannot avoid dismissal merely by attaching bad-faith labels to the same underlying coverage dispute. The Complaint's allegations regarding delay, investigation, survey administration, and denial of coverage all arise from the same nucleus of operative facts and seek recovery flowing from the same alleged injury—the denial of policy benefit. *See generally* Dkt. 23.

Plaintiff attempts to salvage Count III by claiming he seeks distinct damages for "unnecessary expenses" and the loss of a neutral review. This argument fails under *New York University v. Continental Ins. Co*., 87 N.Y.2d 308, 319-20 (1995) and its progeny. *See* Motion, Dkt. 23 at 14-15. In first-party insurance disputes, the only recoverable damages are those dictated by the policy itself, unless a plaintiff can establish an independent tort duty separate from the contract. *New York University,* 87 N.Y.2d at 319-20. As demonstrated in ACE's Motion, Plaintiff's "unnecessary expenses" are nothing more than the transaction costs of disputing a denied claim; costs he expressly agreed to share under the Policy's survey process. Dkt. 23 at 7-9, 18; Dkt. 22-

1 Ex. B, p. 0-4. Because the core injury remains the out-of-pocket cost to repair the Vessel's engines, the remedy for both counts is identical, rendering Count III redundant as a matter of New York law.

Plaintiff's authorities do not compel a different result. Unlike the plaintiffs in *Fishberg*, *Endemann*, and *Ruiz*, Plaintiff has not plausibly alleged claim-handling misconduct attributable to ACE that is independent from the underlying coverage dispute. Dkt. 24 at 11-12. Instead, he merely disputes the manner in which ACE investigated and evaluated the claim. That is precisely the type of claim New York courts routinely dismiss as duplicative. *See* Dkt. 23 at 12-16.

In order to avoid dismissal, Plaintiff points to four purported bases for his bad faith claim: (1) ACE's alleged failure to inspect the disassembled engines; (2) its purported assembly of a survey panel "beholden" to ACE; (3) its alleged withholding of the survey provision, and (4) the length of survey process. Dkt. 24 p. 7. These allegations amount to nothing more than disagreement with ACE's investigation and the ultimate coverage determination. The Complaint pleads no facts showing that ACE manipulated the survey process, directed the surveyors' conclusions, concealed material information it was required to disclose, or otherwise engaged in fraud, bias, collusion, or bad faith. As set forth below, each of Plaintiff's theories rests on speculation and conclusory assertions rather than well-pleaded factual allegations as required under *Twombly* and *Iqbal*, fails as a matter of law, and provides no basis for an independent claim for breach of the implied covenant of good faith and fair dealing.

II. PLAINTIFF FAILS TO PLAUSIBLY ALLEGE BAD FAITH OR SURVEY MISCONDUCT

A. Plaintiff's Failure-To-Inspect Theory Does Not State a Claim

Plaintiff characterizes the alleged ACE decision to decline inspection of the dissembled engines as evidence of bad faith. Dkt. 24 p. 7, 9, 12. The argument fails for several reasons.

First, Plaintiff identifies no provision of the Policy imposing an affirmative obligation upon ACE to perform a physical inspection of the engines and no authority holding that an insurer's decision not to conduct a particular inspection constitutes bad faith.

Second, the decision whether to conduct a particular inspection falls squarely within an insurer's ordinary claims investigation process. The allegation merely reflects Plaintiff's disagreement with the manner in which ACE evaluated the claim. Even assuming ACE declined to inspect the engines, Plaintiff alleges no facts showing that ACE's decision was dishonest, malicious, fraudulent, or intended to deprive plaintiff of contractual rights.

Third, as set forth in ACE's Motion, New York courts repeatedly hold that allegations concerning the adequacy of an insurer's investigation are insufficient to create a separate bad faith claim where the alleged investigative deficiencies merely relate to the insurer's coverage determination. Dkt. 23 at 14-15. In *New York University v. Continental Ins. Co*., 87 N.Y.2d 308, 319-20 (1995), the Court of Appeals rejected precisely that theory. There, the court held that allegations that the insurer conducted a "sham investigation" and improperly denied a claim were held to be merely a repackaged contract claim. *Id.*; *see also County of Orange v. Travelers Indemnity Co.*, 7:13-cv-06790, 2014 WL 1998240, at *3 (S.D.N.Y. May 14, 2014)(holding that allegations concerning delay and failure to investigate addressed the same ultimate grievance as the breach of contract claim and therefore could not support a separate implied covenant cause of action.). Plaintiff's inspection allegations fare no better than *New York University* and *County of Orange*.

At bottom, Plaintiff's inspection allegations merely challenge how ACE reached its coverage determination. They do not identify a separate duty breached by ACE and therefore cannot sustain Count III.

B. Plaintiff's Allegations Concerning the Survey Process Remain Entirely Conclusory

Plaintiff's opposition does not identify facts plausibly supporting the allegation that the survey process was "compromised" or "beholden" to ACE. Dkt. 24 at 7, 18. Rather, Plaintiff asks the Court to infer bad faith from a collection of circumstances that do not establish any misconduct by ACE.

In particular, the opposition relies heavily upon the allegation that the surveyors – including the one Plaintiff independently selected – had a professional relationship spanning approximately twenty years and that one surveyor referred to ACE as "a client of mine." Dkt. No. 24 at 7, 10, 12, 17. Even assuming those allegations are true, neither allegation plausibly demonstrates fraud, collusion, bias, or bad faith. The Complaint contains no allegation that ACE directed the surveyors' conclusions, communicated improperly with the surveyors, offered incentives, reached a predetermined agreement concerning the outcome, or otherwise manipulated the process. Dkt. 22-1.

Plaintiff instead asks the Court to infer collusion solely because professionals operating in a specialized industry knew one another and had previously worked on matters involving the same insurer. In a specialized field like marine hull surveying, experts frequently interact. Plaintiff's disappointment with the survey outcome does not turn ordinary professional familiarity into a plausible claim for fraud or bad faith.

The problem is particularly acute because Plaintiff's own allegations establish that Ken Weinbrecht was *his own chosen* surveyor – not ACE's. Plaintiff himself selected Mr. Weinbrecht to represent his interests in the survey process. Dkt 22-1 at ¶53. Plaintiff does not allege that ACE selected Weinbrecht, controlled Weinbrecht, instructed Weinbrecht, or otherwise exercised authority over him. Plaintiff cannot transform alleged shortcomings by his own selected surveyor

into a breach of good faith claim against ACE absent factual allegations plausibly connecting ACE to the complained-of conduct. None are alleged.

Lastly, Plaintiff's argument that the survey result "mirrored" ACE's prior denial is not evidence that the process was biased. Dkt. 24 at 10. This is not a factual allegation of misconduct; it is merely disagreement with the outcome. Were Plaintiff's theory accepted, every survey outcome favorable to an insurer could itself become evidence that the survey was biased. That is plainly not the law.

In short, Plaintiff repeatedly replaces factual allegations with conclusory descriptions such as "beholden," "biased," "compromised" and "conflicted." But labels are not facts. Under *Iqbal*, courts disregard legal conclusions and conclusory characterizations unsupported by factual allegations. 556 U.S. at 662. The opposition offers rhetoric, not facts.

C. The Alleged Failure to Provide the Survey Clause Is Misleading and Cannot Establish Bad Faith

Plaintiff's assertion that ACE acted in bad faith by allegedly withholding the survey provision is not merely unpersuasive—it is contradicted by and irreconcilable with Plaintiff's own allegations. Plaintiff acknowledges that ACE has insured the Vessel since at least 2010 and that the Policy was renewed annually for more than a decade. Dkt. 24 at 8; Dkt. 22-1 at ¶¶ 8-11. Against that backdrop, Plaintiff's suggestion that he somehow lacked access to the Policy's terms and conditions, including the survey provision, strains credulity. *See also* Dkt. 23 at 7 fn. 2. The allegation is therefore not only unsupported but misleading, as it omits the longstanding contractual relationship between the parties and Plaintiff's obvious receipt of and familiarity with the Policy under which he now sues.

In any event, Plaintiff pleads no prejudice arising from the alleged omission. He admittedly knew of the survey process, elected to invoke it, selected his own surveyor, and completed the

process. The opposition never explains how the alleged omission caused any actionable injury. Accordingly, the alleged failure to provide the survey provision does not plausibly support an inference of bad faith

D. The Claimed Delay Does Not Allege Misconduct By ACE

Plaintiff emphasizes that the survey process lasted approximately ten months. Dkt. 24 at 7, 16. Again, however, Plaintiff identifies no factual allegations showing that *ACE* caused the delay, directed the delay, intended the delay, or acted improperly in connection with the timing of the survey. Indeed, the opposition provides no factual basis connecting any alleged delay to misconduct by ACE. Instead, Plaintiff invites the Court to infer bad faith merely because the process took longer than he would have preferred. Such speculation is insufficient under Rule 12(b)(6).

III. PLAINTIFF'S ARGUMENT REGARDING THE SURVEY CLAUSE AND EXHIBIT B LACKS MERIT

A. The Court May Properly Consider the Survey Clause Under Rule 12(b)(6)

Plaintiff argues that the Court must blind itself to the text of the survey clause (Policy Form RM240000 (11/17)– Dkt. 22-2) because it was introduced via an attorney's declaration and was not attached to the Complaint. Dkt. 24 at 14-15. This argument ignores the foundational federal principle that a court, in deciding Rule 12(b)(6) motions, may consider documents incorporated by reference and documents that are "integral to the complaint". *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002); *Cybercreek Entertainment, LLC v. U.S. Underwriters Ins. Co.*, 696 F. Appx. 554 (2d Cir. 2017).

The Complaint itself repeatedly references the survey clause and bases substantial portions of Count III upon that provision. Plaintiff expressly alleges that ACE invoked the survey clause, challenges ACE's conduct under that clause, and alleges that the umpire exceeded the clause's

scope by addressing causation rather than valuation. Indeed, Form RM240000 (11/17) is explicitly referenced in the FORMS SCHEDULE of the Policy attached to the Complaint. Dkt 2-1 at p.11; Dkt. 23 at 7 fn. 2.

Thus, the survey provision is not merely referenced in passing; it is integral to the claims asserted. The Court may therefore consider the operative Policy language upon which the Complaint relies without converting the motion into one for summary judgment, as Plaintiff alleges. Plaintiff cannot rely heavily on the existence of a contractual process to allege bad faith while simultaneously blocking the Court from reading the very clause that governs that process.

B. The "Without Prejudice" Text Explicitly Preserves ACE's Right to Maintain Its Coverage Position

Plaintiff's argument that the survey provision's "without prejudice" text only protects ACE from waiving its defenses, not from "bad-faith administration", misses the point. Dkt. 24 at 16-17. The Policy expressly provides that participation in a survey does not waive either party's rights or coverage position. Thus, ACE's decision to maintain its coverage defenses while participating in the survey process was not evidence of bad faith—it was conduct expressly authorized by the Policy. Plaintiff's contrary interpretation would effectively read the "without prejudice" provision out of the contract by imposing liability on ACE for exercising a right the parties expressly agreed it could preserve.

Nor does Plaintiff's allegation that the survey "mirrored" ACE's coverage position or improperly addressed causation alter the analysis. At most, those allegations reflect disagreement with the survey process and the underlying coverage dispute. They do not plausibly establish bad faith, bias, or misconduct. Because the Policy expressly permitted ACE to participate in the survey while preserving its rights and defenses, Plaintiff cannot convert dissatisfaction with the survey or

its outcome into an independent claim for breach of the implied covenant of good faith and fair dealing.

Lastly, Plaintiff misreads *Times Mirror.* Dkt. 24 at 16. ACE does not contend that the Policy permits bad faith; rather, it contends that Plaintiff cannot manufacture a bad faith claim from ACE's exercise of rights expressly afforded by the Policy. Plaintiff cites no contractual provision, legal authority, or non-conclusory fact establishing that ACE breached any duty to disclose alleged conflicts, control the timing of the survey process, or police the conduct of Plaintiff's own selected surveyor. Under *Times Mirror*, the implied covenant cannot be used to create obligations not found in the parties' agreement. 294 F.3d 383, 394-95 (2d Cir. 2002).[1]

Accordingly, even accepting Plaintiff's allegations as true, Count III fails as a matter of law.

IV. PLAINTIFF'S OPPOSITION DOES NOT CURE THE FUNDAMENTAL PLEADING DEFECTS IN COUNT III

Repackaging a coverage dispute as a challenge to claim administration (Dkt. 24 pp. 6-7) does not create an independent claim for breach of the implied covenant. The question is not how Plaintiff labels the conduct – the question is whether Plaintiff alleges facts plausibly demonstrating an independent breach by ACE. He does not. The Complaint remains devoid of factual allegations showing that ACE engaged in fraud, manipulated the survey, directed the surveyors' conclusions, concealed material information, interfered with the survey process, or otherwise acted in bad faith.

[1] Plaintiff's reliance on *Dalton* is also misplaced. Dkt. 24 at 15. *Dalton* involved a breach of contract arising from a testing service's failure to follow its own procedures, not from its exercise of a contractual right. See *UMB Bank, N.A. v. Sanofi*, No. 15 Civ. 8725, 2018 WL 3300658, at *6 (S.D.N.Y. Apr. 12, 2018). Here, by contrast, ACE complied with the survey provision and exercised rights expressly afforded by the Policy. Plaintiff does not allege facts showing that ACE acted arbitrarily or irrationally. Instead, he relies on conclusory allegations that certain surveyors had prior professional relationships and that ACE somehow controlled a survey process that included Plaintiff's own selected surveyor.

Dkt. 22-1. Instead, Plaintiff points to circumstances from which he asks the Court to infer misconduct. Such speculation cannot satisfy the pleading requirements established in *Twombly* and *Iqbal*.

Plaintiff misconstrues *Koffler v. Cincinnati Insurance Co.,* 239 A.D.3d 840 (2d Dep't 2025). Dkt. 24 at 13. Far from supporting Plaintiff's position, *Koffler* underscores the pleading deficiencies here. While *Koffler* recognizes that a valuation determination may be challenged upon a showing of fraud, bias, or bad faith, it dismissed the claim because the plaintiff failed to allege facts supporting such misconduct.

Here, Plaintiff similarly alleges no facts plausibly showing fraud, collusion, bias, or bad faith attributable to ACE. Instead, Plaintiff relies on conclusory allegations of prior professional relationships, prior work involving ACE, delay in the survey process, and dissatisfaction with the survey's outcome. Those allegations do not reasonably support an inference of misconduct and fall well short of the showing contemplated by *Koffler*. Accordingly, rather than aiding Plaintiff, *Koffler* confirms that Count III should be dismissed.

V. COUNT I REMAINS DUPLICATIVE OF THE BREACH OF CONTRACT CLAIM

Plaintiff's opposition fails to rescue Count I (declaratory judgment). Plaintiff argues that because ACE continues to insure the Vessel, Count I serves a "forward-looking" purpose to define future rights regarding latent grounding damage. Dkt. 24 at 19-20. This argument is entirely speculative. Under Plaintiff's theory, virtually every coverage dispute involving the Policy would warrant declaratory relief, regardless of the specific facts giving rise to the claim. Further, his theory assumes that the Vessel will someday sustain another grounding, suffer similar engine damage, and give rise to another coverage dispute under the Policy. A declaratory judgment is meant to guide parties facing prospective, imminent choices, not to issue an abstract legal rule for

hypothetical future accidents. *Fleisher v. Phoenix Life Ins. Co.,* 858 F. Supp. 2d 290, 302 (S.D.N.Y. 2012); Dkt. 23 at 11-12.

Rather, the only material dispute is whether the alleged latent engine damage is a "covered loss" under the Policy at issue which will be fully resolved through Plaintiff's breach of contract claim (Count II). Once the Court decides whether the April 2022 grounding caused a covered loss, the legal controversy is over. Because Count I seeks no relief beyond what will naturally be determined by a verdict on Count II, it serves no independent, useful purpose and should be dismissed to streamline the litigation.

CONCLUSION

For the foregoing reasons and those set forth in its Motion, ACE respectfully requests that the Court dismiss Count I (declaratory judgment) and Count III (breach of the implied covenant of good faith and fair dealing) of the Complaint.

Dated: New York, New York
August 7, 2026

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TO: All counsel of record (via ECF)

CERTIFICATION OF SERVICE

I hereby certify that on August 7, 2026, a true and correct copy of the forgoing Reply Memorandum of Law in Further Support of Ace American Insurance Company's Motion for Partial Dismissal of the Complaint was served on all counsel of record via ECF.

Dated: August 7, 2026

/s/Eridania Perez
Eridania Perez

CERTIFICATION OF COMPLIANCE

Pursuant to the Honorable Kenneth M. Karas' Individual Rules of Practice II.B (Motions), the undersigned hereby certifies that the foregoing Reply Memorandum of Law in Further Support of Ace American Insurance Company's Motion for Partial Dismissal of the Complaint contains 3,321 words (exclusive of case caption, table of content, table of authorities, signature block, and certificate of compliance), as determined by word count of Microsoft Word.

Dated: August 7, 2026

/s/Eridania Perez
Eridania Perez