IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ETC NORTHEAST PIPELINE, LLC	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED, NATIONAL FIRE & MARINE INSURANCE COMPANY, NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA., ASPEN SPECIALTY INSURANCE COMPANY, HDI GLOBAL INSURANCE COMPANY, IRONSHORE SPECIALTY INSURANCE COMPANY, LIBERTY SURPLUS INSURANCE CORPORATION, GENERAL SECURITY INDEMNITY CO. OF AZ, ACE AMERICAN INSURANCE COMPANY, XL INSURANCE AMERICA, INC., WESTPORT INSURANCE CORPORATION, ZURICH AMERICAN INSURANCE COMPANY, AND CERTAIN UNDERWRITERS AT LLOYD'S, LONDON,	)	C.A. No. N21C-10-177 MMJ CCLD
	)	
Defendants.	)	

Submitted: June 20, 2023
Decided: September 5, 2023
Unsealed: September 27, 2023

On Defendants' Motion to Dismiss Bad Faith Extracontractual Claims in Plaintiff's Amended Complaint (Counts II–V)
GRANTED

OPINION

Jennifer C. Wasson, Esq., Carla M. Jones, Esq., Potter Anderson & Corroon LLP, Wilmington, DE, Robin L. Cohen, Esq., Kenneth H. Frenchman, Esq. (*pro hac vice*), Cohen Ziffer Frenchman & McKenna LLP, New York, NY, *Attorneys for Plaintiff*

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JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

This is an insurance coverage dispute. ETC Northeast Pipeline, LLC ("ETC") owned and operated a natural gas pipeline known as the Revolution Pipeline (the "Pipeline").[1] Defendants are insurers ("Defendant Insurers") that provided $700 million in "all risk" insurance coverage for the Pipeline, which included provisions for business interruption coverage.[2] The insurance program contains over a dozen insurance policies from different insurers.[3] Each Defendant Insurer's "policy follows the same insurance contract form with minor deviations in some instances, none of which are material to this litigation."[4] The Court will refer to the common policy terms as the "Policy."

On September 10, 2018, a landslide occurred that caused damage to the Pipeline.[5] The Pipeline was shut down for nearly two and a half years.[6] ETC provided notice of the incident to Defendant Insurers.[7] ETC filed a claim under its insurance policies.[8] Defendant Insurers initially did not accept coverage.[9] Rather, after a series of requests over the course of three years, Defendant Insurers

[1] Am. Compl. at ¶ 2.
[2] *Id.* at ¶¶ 4, 50.
[3] *Id.* at ¶ 44.
[4] *Id.* at ¶ 45.
[5] *Id.* at ¶ 3.
[6] *Id.* at ¶ 3.
[7] *Id.* at ¶ 5.
[8] *Id.* at ¶ 59.
[9] *Id.* at ¶¶ 59–69.

allegedly agreed to pay approximately two percent of the alleged business interruption loss.[10] Because ETC was not able to resolve the claim, it initiated this suit.[11]

ETC alleges the following counts against Defendant Insurers: (Count I) breach of contract; (Count II) breach of the implied covenant of good faith and fair dealing; (Count III) violations of the Texas Unfair Claim Settlement Practices Act; (Count IV) violations of the Texas Prompt Payment of Claims Act; (Count V) violations of the Pennsylvania Unfair Insurance Practices Act; and (Count VI) declaratory judgment that "ETC is entitled to coverage for business interruption caused"[12] from the damage to the Pipeline on September 10, 2018.

On March 22, 2023, Defendant Insurers filed their Motion to Dismiss Counts II–V. On April 24, 2023, ETC filed its response brief. On May 15, 2023, Defendant Insurers filed their reply brief. The Court heard oral argument on June 20, 2023.

MOTION TO DISMISS STANDARD

In a Rule 12(b)(6) Motion to Dismiss, the Court must determine whether the claimant "may recover under any reasonably conceivable set of circumstances

[10] *Id.* at ¶¶ 59–69.
[11] *Id.* at ¶ 70.
[12] *Id.* at ¶ 115.

susceptible of proof."[13] The Court must accept as true all well-pled allegations.[14] Every reasonable factual inference will be drawn in the non-moving party's favor.[15] If the claimant may recover under that standard of review, the Court must deny the Motion to Dismiss.[16]

ANALYSIS

Counts II–V allege breach of the implied covenant of good faith and fair dealing, violations of the Texas Unfair Claim Settlement Practices Act, violations of the Texas Prompt Payment of Claims Act, and violations of the Pennsylvania Unfair Insurance Practices Act.

Choice of Law

Section 9 of the Policy's Declarations contains the choice-of-law provision, which states: "Any dispute relating to this Policy or to a claim including but not limited thereto, the interpretation of any provision of the Policy shall be governed by and construed in accordance with the laws of the state of New York, United States of America."

[13] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).
[14] *Id.*
[15] *Wilmington Sav. Fund. Soc'v, F.S.B. v. Anderson*, 2009 WL 597268, at *2 (Del. Super.) (citing *Doe v. Cahill*, 884 A.2d 451, 458 (Del. 2005)).
[16] *Spence*, 396 A.2d at 968.

"If a contract is unambiguous, extrinsic evidence may not be used to interpret the intent of the parties, to vary the terms of the contract[,] or to create an ambiguity."[17]

Applicable New York Law

"Relating To" Language

New York recognizes that "relating to" language in a choice-of-law provision is broad and may apply to disputes beyond contract interpretation (*i.e.*, extracontractual claims).[18] Under New York law, if a contract's choice-of-law provision provides that it applies to any dispute "relating to" the contract,[19] then "'the choice-of-law provision is sufficiently broad as to encompass the entire relationship between the contracting parties.'"[20]

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[17] *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc*., 702 A.2d 1228, 1232 (Del. 1997).
[18] *Avnet, Inc. v. Deloitte Consulting LLP*, 187 A.D.3d 430, 433 (N.Y. App. Div. 2020) (concluding that contract language stating that "all matters relating to this Agreement . . . shall be governed by . . . the laws of the State of New York . . . is broad enough to encompass plaintiff's claim that defendant negligently performed the services it was supposed to provide . . . .").
[19] *Id.*; *Refco Grp. Ltd., LLC v. Cantor Fitzgerald, L.P*., 2014 WL 2610608, at *40 (S.D.N.Y) ("Unlike choice-of-law provisions that apply to disputes 'arising out of' or 'relating to' a contract, those that provide that the contract will be 'governed by' or 'construed in accordance with' the law of a particular state are not sufficiently broad to reach tort claims such as fraudulent conveyance.").
[20] *Refco Grp.*, 2014 WL 2610608, at *40 (quoting *H.S.W. Enterprises, Inc. v. Woo Lae Oak, Inc*., 171 F. Supp. 2d 135, 141, n.5 (S.D.N.Y. 2001)).

Breach of the Implied Covenant of Good Faith and Fair Dealing

"As in all contracts, implicit in contracts of insurance is a covenant of good faith and fair dealing, such that 'a reasonable insured would understand that the insurer promises to investigate in good faith and pay covered claims.'"[21] "Nevertheless, [in the first-party insurance context,] 'New York law . . . does not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing when a breach of contract claim, based on the same facts, is also pled,' nor does it recognize 'an independent cause of action for bad faith denial of insurance coverage.'"[22]

> If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may

[21] *Bi-Econ. Mkt., Inc. v. Harleysville Ins. Co. of New York*, 886 N.E.2d 127, 131 (N.Y. 2008) (quoting *New York Univ. v. Cont'l Ins. Co.*, 662 N.E.2d 763, 769 (N.Y. 1995)).

[22] *Woodhams v. Allstate Fire & Cas. Co.*, 748 F. Supp. 2d 211, 223 (S.D.N.Y. 2010), *aff'd*, 453 F. App'x 108 (2d Cir. 2012) (quoting *Vitrano v. State Farm Ins. Co.*, 2008 WL 2696156, at *3 (S.D.N.Y.)); *see also Scottsdale Ins. Co. v. McGrath*, 549 F. Supp. 3d 334, 344, n.2 (S.D.N.Y. 2021) ("In the first-party context, 'New York Law . . . does not recognize . . . "an independent cause of action for bad faith denial of insurance coverage."'" (quoting *Woodhams*, 748 F. Supp. 2d at 223)); *Violet Realty, Inc. v. Affiliated FM Ins. Co.*, 267 F. Supp. 3d 384, 388 (W.D.N.Y. 2017) ("'[R]aising both [a breach of contract and bad faith] claim[] in a single complaint is redundant, and courts confronted with such complaints under New York law regularly dismiss any freestanding claim for breach of the covenant of fair dealing.'" (quoting *Jordan v. Verizon Corp.*, 2008 WL 5209989, at *7 (S.D.N.Y.))); *2004 Bowery Partners, LLC v. E.G. W. 37th LLC*, 2011 WL 2651792, at *6 (N.Y. Sup. Ct.) ("Under New York law, there is no separate cause of action for breach of the implied duty of good faith and fair dealing because it "is merely a breach of the underlying contract[.]"); *Head v. Emblem Health*, 156 A.D.3d 424, 425 (N.Y. App. Div. 2017) ("There is no independent cause of action for bad faith breach of insurance contract arising from an insurer's failure to perform its obligations under an insurance contract." (internal quotations and citations omitted)).

> be disregarded as superfluous as no additional claim is actually stated.[23]

"Therefore, when a complaint alleges both a breach of contract and a breach of the implied covenant of good faith and fair dealing based on the same facts, the latter claim should be dismissed as redundant."[24] New York courts have dismissed claims for breach of the implied covenant of good faith and fair dealing pled separately from breach of contract claims.[25]

ETC relies on *Thrall v. State Farm Mutual Automobile Insurance Company*[26] to support its contention that New York's law has shifted, and now allows for independent causes of action for breach of the implied covenant of good faith and fair dealing.[27] In *Thrall*, the plaintiff alleged that the insurer's "denial of benefits was part of a larger conspiracy on the public to defraud accident

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[23] *MeehanCombs Glob. Credit Opportunities Funds, LP v. Caesars Ent. Corp*., 80 F. Supp. 3d 507, 514 (S.D.N.Y. 2015) (internal quotations and citations omitted).
[24] *Cruz v. FXDirectDealer, LLC*, 720 F.3d 115, 125 (2d Cir. 2013) (explaining the dismissal in reference to New York law).
[25] *E.g.*, *2004 Bowery Partners*, 2011 WL 2651792, at *6 (dismissing the breach of the implied covenant of good faith and fair dealing claim because it was duplicative of the breach of contract claim); *Cont'l Cas. Co. v. Nationwide Indem. Co*., 16 A.D.3d 353, 355 (N.Y. App. Div. 2005) (concluding that a claim for the breach of the implied covenant of good faith and fair dealing properly was dismissed because there was "no separate cause of action in tort for an insurer's bad faith failure to perform its obligations under an insurance policy"); *TeeVee Toons, Inc. v. Prudential Sec. Credit Corp*., 8 A.D.3d 134, 134 (N.Y. App. Div. 2004) (affirming that a breach of the implied covenant of good faith and fair dealing claim was properly dismissed because it was "redundant" of the breach of contract claim); *Triton Partners LLC v. Prudential Sec. Inc*., 301 A.D.2d 411, 411 (N.Y. App. Div. 2003) ("The breach of the covenant of good faith and fair dealing claim was properly dismissed since it was merely a substitute for a nonviable breach of contract claim.").
[26] 2023 WL 2518438 (N.Y. Sup. Ct. 2023).
[27] ETC's Answering Br. at 30.

victims . . . ."[28] The plaintiff alleged two counts of breach of contract and two counts of bad faith breach of contract.[29] The plaintiff asserted claims against the insurer, the entity that scheduled the medical examinations for the plaintiff, and the doctor who performed the examination.[30] The insurer allegedly had paid substantial sums of money to the entity that scheduled the medical examination, and to the doctor in return for their roles in the alleged conspiracy.[31] The Court concluded that a bad faith breach of contract claim "may be pleaded separately from a breach of contract claim for the purpose of seeking to recover consequential damages resulting from an insurer's alleged bad faith performance."[32] The Court found that the plaintiff had sufficiently pled two counts of bad faith breach of contract and permitted the bad faith breach of contract claims to survive the motion to dismiss.[33]

Thrall is the only New York case that the Court is aware of that has permitted a separate bad faith claim to proceed in parallel with a breach of contract claim in the first-party insurance context. Other New York authority suggests that New York law requires dismissal of a claim for breach of the implied covenant of

[28] 2023 WL 2518438, at *1.
[29] *Thrall* First Amend. Compl. ¶¶ 249–89, Index No. EF20211000 (Sept. 19, 2021). The Court notes that the plaintiff also alleged other causes of action, through they are immaterial to the instant analysis.
[30] *Id.* at *1.
[31] *Id.*
[32] *Id.* at *2.
[33] *Id.*

good faith and fair dealing—or a claim for bad faith breach of contract—in the first-party insurance context where "a breach of contract claim, based on the same facts, is also pled."[34]

In *Thrall*, the Court relied on both *Panasia Estates, Inc. v. Hudson Insurance Company*[35] and *Gutierrez v. Government Employees Insurance Company*[36] to support its position that a bad faith claim may be brought separately from a breach of contract claim to seek consequential damages.[37] *Gutierrez* is based on a third-party insurance claim,[38] rather than a first-party insurance claim like in the instant case. Therefore, *Gutierrez* does not apply to the instant case. The *Panasia* plaintiff alleged one count of breach of contract in its complaint,

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[34] *Woodhams v. Allstate Fire & Cas. Co*., 748 F. Supp. 2d 211, 223 (S.D.N.Y. 2010), *aff'd*, 453 F. App'x 108 (2d Cir. 2012) (quoting *Vitrano v. State Farm Ins. Co*., 2008 WL 2696156, at *3 (S.D.N.Y.)); *see also Scottsdale Ins. Co. v. McGrath*, 549 F. Supp. 3d 334, 344, n.2 (S.D.N.Y. 2021) ("In the first-party context, 'New York Law . . . does not recognize . . . "an independent cause of action for bad faith denial of insurance coverage."'" (quoting *Woodhams*, 748 F. Supp. 2d at 223)); *Violet Realty, Inc. v. Affiliated FM Ins. Co*., 267 F. Supp. 3d 384, 388 (W.D.N.Y. 2017) ("'[R]aising both [a breach of contract and bad faith] claim[] in a single complaint is redundant, and courts confronted with such complaints under New York law regularly dismiss any freestanding claim for breach of the covenant of fair dealing.'" (quoting *Jordan v. Verizon Corp*., 2008 WL 5209989, at *7 (S.D.N.Y.))); *2004 Bowery Partners, LLC v. E.G. W. 37th LLC*, 2011 WL 2651792, at *6 (N.Y. Sup. Ct.) ("Under New York law, there is no separate cause of action for breach of the implied duty of good faith and fair dealing because it "is merely a breach of the underlying contract[.]"); *Head v. Emblem Health*, 156 A.D.3d 424, 425 (N.Y. App. Div. 2017) ("There is no independent cause of action for bad faith breach of insurance contract arising from an insurer's failure to perform its obligations under an insurance contract." (internal quotations and citations omitted)).

[35] 886 N.E.2d 135, 137 (N.Y. 2008).

[36] 136 A.D.3d 975 (N.Y. App. Div. 2016).

[37] 2023 WL 2518438, at *2.

[38] 136 A.D.3d at 975.

without alleging a separate count for bad faith.[39] Instead, the *Panasia* plaintiff alleged bad faith within its breach of contract count to seek consequential damages.[40] The instant case alleges a count for breach of contract, and a separate count for breach of the implied covenant of good faith and fair dealing. Therefore, *Panasia* does not directly address whether a separate claim for bad faith can remain when a party also alleges a breach of contract claim in the first-party context.

Thrall also addresses whether consequential damages may be recovered from a bad faith claim.[41] A companion case, *Bi-Economy Market Inc. v. Harleysville Insurance Company of New York*,[42] also discusses consequential damages in the context of a claim for bad faith. Like in *Panasia*, the plaintiff in *Bi-Economy* alleged a count of breach of contract, without alleging a separate count for bad faith.[43] The *Bi-Economy* plaintiff also alleged bad faith within its breach of contract count to seek consequential damages.[44]

The Third Department of the Appellate Division of the New York Supreme Court clarified:

> We agree that nothing in *Bi-Economy* or *Panasia* implicitly altered or abrogated previous rules limiting

[39] *Panasia* Compl., 2005 WL 5610929, ¶¶ 16–35 (Aug. 29, 2005).
[40] *Id.* at ¶¶ 24, 32, 33, 35.
[41] 2023 WL 2518438, at *2–4.
[42] 886 N.E.2d 127 (N.Y. 2008).
[43] *Bi-Economy* Third Amend. Compl., 2007 WL 5794403, ¶¶ 86–117 (March 26, 2007).
[44] *Id.* at ¶¶ 92, 95–96.

> recovery of damages for breach of a contract-related duty. Rather, *Bi-Economy* and *Panasia* announced a new rule that extended the ability to recover consequential damages for breach of the covenant of good faith and fair dealing in the context of an insurance contract—a circumstance where they had not previously been available—subject to the same rules that otherwise limit recovery of damages for any breach of contract.[45]

Therefore, the Court finds that New York law requires dismissal of a claim for the breach of the covenant of good faith and fair dealing in the first-party insurance context where "a breach of contract claim, based on the same facts, is also pled."[46] However, "consequential damages resulting from a breach of the covenant of good faith and fair dealing may be asserted in an insurance contract

[45] *Brown v. Gov't Emps. Ins. Co*., 156 A.D.3d 1087, 1090–91 (N.Y. App. Div. 2017).

[46] *Woodhams v. Allstate Fire & Cas. Co*., 748 F. Supp. 2d 211, 223 (S.D.N.Y. 2010), *aff'd*, 453 F. App'x 108 (2d Cir. 2012) (quoting *Vitrano v. State Farm Ins. Co*., 2008 WL 2696156, at *3 (S.D.N.Y.)); *see also Scottsdale Ins. Co. v. McGrath*, 549 F. Supp. 3d 334, 344, n.2 (S.D.N.Y. 2021) ("In the first-party context, 'New York Law . . . does not recognize . . . "an independent cause of action for bad faith denial of insurance coverage."'" (quoting *Woodhams*, 748 F. Supp. 2d at 223)); *Violet Realty, Inc. v. Affiliated FM Ins. Co*., 267 F. Supp. 3d 384, 388 (W.D.N.Y. 2017) ("'[R]aising both [a breach of contract and bad faith] claim[] in a single complaint is redundant, and courts confronted with such complaints under New York law regularly dismiss any freestanding claim for breach of the covenant of fair dealing.'" (quoting *Jordan v. Verizon Corp*., 2008 WL 5209989, at *7 (S.D.N.Y.))); *2004 Bowery Partners, LLC v. E.G. W. 37th LLC*, 2011 WL 2651792, at *6 (N.Y. Sup. Ct.) ("Under New York law, there is no separate cause of action for breach of the implied duty of good faith and fair dealing because it "is merely a breach of the underlying contract[.]"); *Head v. Emblem Health*, 156 A.D.3d 424, 425 (N.Y. App. Div. 2017) ("There is no independent cause of action for bad faith breach of insurance contract arising from an insurer's failure to perform its obligations under an insurance contract." (internal quotations and citations omitted)).

context, so long as the damages were 'within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting.'"[47]

The Court finds *Thrall* unpersuasive to the extent it permitted a breach of contract claim to run parallel with a separate cause of action for bad faith. The Court relies instead on the greater weight of authority set forth in other cited New York cases. Under New York law, breach of the implied covenant of good faith and fair dealing may be alleged as part of the breach of contract claim, but breach of the implied covenant of good faith and fair dealing—and bad faith breach of contract—cannot be pled as independent causes of action, at least in cases involving first-party insurance claims. Additionally, consequential damages may be pled as part of a breach of contract claim as outlined in *Panasia* and *Bi-Economy*.

Pennsylvania and Texas Law

Based on the timing of ETC's Amended Complaint, the Pennsylvania and Texas statutory claims appear to be an afterthought. Defendant Insurers acknowledge that the statutory claims are requests in the alternative.

[47] *Panasia*, 886 N.E.2d at 137 (internal quotations omitted); *see also Bi-Econ.*, 886 N.E.2d at 132 (holding that the plaintiff may seek consequential damages for its breach of contract claim); *Chaffee v. Farmers New Century Ins. Co*., 2008 WL 4426620, at *5 (N.D.N.Y.) ("[T]he Court finds that Plaintiffs' claim for consequential, extra-contractual damages is properly part of their breach-of-contract claim and not a separate cause of action subject to dismissal on a Rule 12(c) motion.").

ETC alleges that Defendant Insurers have violated Section 541 of the Texas Insurance Code, and Sections 542.001 and 542.014 of the Texas Unfair Claim Settlement Practices Act (the "TUCSPA"), by failing to conduct investigation and settlement of ETC's claim with reasonable promptness.[48] ETC alleges Defendant Insurers violated the Texas Prompt Payment of Claims Act ("TPPCA") by requesting information "in a piecemeal fashion months after the Claim was noticed" and delaying full payment of ETC's claim.[49]

ETC also alleges that Defendant Insurers violated the Pennsylvania Unfair Insurance Practices Act and Unfair Claims Settlement Practices Regulations by failing to deal fairly with ETC throughout the claim resolution process.[50] ETC alleges, amongst other things, that Defendant Insurers misrepresented Policy provisions, refused to pay ETC's claim without conducting a reasonable investigation, and failed to conduct a good faith settlement.[51]

ETC has not set out any specific claims wholly unrelated to the underlying Policy and which would not involve reference to and interpretation of the Policy provisions.

[48] Amend. Compl. ¶¶ 90–94.
[49] Amend. Compl. ¶¶ 95–103.
[50] Amend. Compl. ¶ 106.
[51] Amend. Compl. ¶ 106(a)–(k).

ETC has not identified any Pennsylvania or Texas case law on point that interprets a choice of law provision containing the language at issue in this case. ETC also has not identified any Pennsylvania or Texas case law that establishes a fundamental state policy which would require deference to statutory requirements designed to protect consumers. While Texas and Pennsylvania enacted the statutes to protect consumers, the Court will not adopt a public policy exception to a choice-of-law provision where a plaintiff seeks to use public policy "as a sword for parties to avoid their contracts when avoidance suits their personal interests."[52]

Texas courts have dismissed state extracontractual claims when the contract contains an applicable New York choice-of-law provision.[53] Pennsylvania courts also have dismissed state extracontractual claims when New York law applies.[54]

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[52] *Sycamore Partners Mgmt., L.P. v. Endurance Am. Ins. Co.*, 2021 WL 761639, at *7 (Del. Super.); *see also Libeau v. Fox*, 880 A.2d 1049, 1058 (Del. Ch.), *judgment entered*, (Del. Ch. 2005), *aff'd in part, rev'd in part*, 892 A.2d 1068 (Del. 2006) (explaining the public policy "exception does not exist as a sword for parties to avoid their contracts when avoidance suits their personal interests, but as a shield to protect the community in general when the terms of a contract endanger the public interest.").

[53] *Shumate v. Concept Special Risks Ltd, Inc.*, 2015 WL 12732861, at *3–4 (S.D. Tex.), *report and recommendation adopted*, 2016 WL 107158 (S.D. Tex.) (dismissing the plaintiff's claims under Texas law because the New York choice-of-law provision applied); *Great Lakes Reinsurance (UK) PLC v. Tico Time Marine LLC*, 2011 WL 1044154, at *4–5 (S.D. Tex.) (dismissing the plaintiff's claims under the Texas insurance code because the New York choice-of-law provision applied, and "New York does not recognize Texas statutes").

[54] *Fairsea, LLC v. Philadelphia Indem. Ins. Co*, 2012 WL 6562833, at *6 (E.D. Pa.) (dismissing the plaintiff's state statutory claim of bad faith insurance because New York law applied); *Koken v. Lexington Ins. Co.*, 2006 WL 5377234, at *15 (E.D. Pa.) (dismissing the plaintiff's bad faith claim after concluding New York law applied because, under New York law, "a plaintiff may not bring an independent cause of action for bad faith based upon an insured's handling of a particular claim").

New York Law Applies

The Court finds that while the Policy's choice-of-law provision is not a model of precise drafting, the Policy's choice-of-law provision nevertheless is broad and unambiguous. The provision states that New York law applies to "any dispute relating to this Policy." The Amended Complaint fails to set forth any claims asserting Pennsylvania or Texas statutory law, or seeking statutory remedies, that are based solely on, and arise independently from, statutory rights and obligations. All claims are related to the Policy and will involve interpreting and construing contract provisions in order to determine whether ETC is entitled to relief. **THEREFORE**, Defendant Insurer's Motion to Dismiss Counts II–V is hereby **GRANTED**.

CONCLUSION

The Court finds that New York law applies to Counts II–V of ETC's Amended Complaint. New York law does not recognize a separate claim for breach of the implied covenant of good faith and fair dealing in the first-party insurance context when a plaintiff also pleads a breach of contract claim based on the same facts. New York law also does not recognize claims under Pennsylvania and Texas statutory law. The Amended Complaint fails to set forth any claims asserting Pennsylvania or Texas statutory law, or seeking statutory remedies, that are based solely on, and arise independently from, statutory rights and obligations.

All claims are related to the Policy and will involve interpreting and construing contract provisions in order to determine whether ETC is entitled to relief.

THEREFORE, Defendant Insurer's Motion to Dismiss Counts II–V is hereby **GRANTED**.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston