

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

RENAISSANCE ON MEMORIAL,
L.L.C.,

Plaintiff,

VS.

TRAVELERS CASUALTY
INSURANCE COMPANY OF
AMERICA AND TRAVELERS
PROPERTY CASUALTY COMPANY
OF AMERICA,

Defendant.

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CIVIL ACTION NO. 4:23-cv-00472-JDR-MTS

DEFENDANT TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA’S
MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

Defendant Travelers Casualty Insurance Company of America (“TCICA”) files this Motion for Summary Judgment and Brief in Support (“Motion”) and respectfully states:

I. SUMMARY OF MOTION

This first-party insurance dispute arises out of Plaintiff Renaissance on Memorial, LLC's ("Plaintiff") claim for coverage under a commercial property insurance policy issued by TCICA for damage allegedly sustained by Plaintiff's retail shopping center in Tulsa Oklahoma as the result of a storm event occurring on April 22, 2020.

Plaintiff asserts two causes of action against TCICA. First, Plaintiff claims TCICA breached the applicable policy by failing to pay for all covered damage allegedly caused by the April 22, 2020 storm made the basis of its property insurance claim. Second, Plaintiff claims TCICA breached the common-law duty of good faith and fair dealing by failing to conduct a reasonable investigation of Plaintiff's claim for coverage and failing to pay all benefits Plaintiff

was entitled to receive under the applicable policy. However, as the undisputed facts make clear, many of which are stipulated, neither of these causes of action are legally viable.

Because Plaintiff failed to commence this lawsuit within two years of the April 22, 2020 storm made the basis of its property insurance claim, as expressly mandated by the applicable policy, Plaintiff's cause of action for breach of contract is barred as a matter of law. And, because Plaintiff failed to assert its cause of action for common-law bad faith until more than thirty-four months after the latest date on which any such cause of action might have accrued, Plaintiff's claim for breach of the common-law duty of good faith and fair dealing is likewise time-barred as a matter of law. TCICA is thus entitled to summary judgment on all claims asserted by Plaintiff in this action.

II. MATERIAL UNDISPUTED FACTS

1. TCICA issued Policy No. 680-3J976096-19-42 to Plaintiff, with effective dates of coverage from June 11, 2019 through June 11, 2020 ("Policy"), insuring certain property located at 8281 and 8293-8393 South Memorial Drive, Tulsa, Oklahoma 74133 (collectively, "Property"), subject to the terms, conditions, limitations, exclusions, and deductibles set forth in the Policy.¹

2. On or about August 7, 2020, Plaintiff made a claim for coverage under the Policy for property damage allegedly sustained by the Property as the result of a hail and/or windstorm reportedly occurring on or about April 22, 2020, identified by TCICA as claim number DHY3295 ("Claim").²

3. After investigating and adjusting the Claim, TCICA acknowledged coverage under

¹ See Joint Status Report [ECF No. 30] at IV.C.1; Exhibit A [Haneline Dec.] at ¶¶2-3; see also Exhibit A-1 [Policy].

² See Plaintiff's Complaint [ECF No. 3] at ¶18; Joint Status Report [ECF No. 30] at IV.C.2; Exhibit A [Haneline Dec.] at ¶4; Exhibit B-1 [Plaintiff's RFA Resp.] at Resp. No. 1; Exhibit B-3 [WCCES Report – 08.05.22] at REN000270 (noting reported loss date of April 22, 2020).

the Policy for certain of Plaintiff's claimed physical loss or damage at the Property,³ and it paid Plaintiff the sum total of \$107,266.35 under the Policy for covered Storm damage observed at the Property in connection with the Claim.⁴

4. TCICA advised Plaintiff of its coverage determination with respect to the Claim, as well as TCICA's valuation of the covered physical loss or damage sustained by the Property as a result of the Storm, via letters dated September 14, 2020 and December 4, 2020.⁵

5. As of December 2020, neither Plaintiff nor any person purporting to act on Plaintiff's behalf had advised TCICA of any objection to TCICA's coverage determination with respect to the Claim.⁶ Further, as of December 2020, neither Plaintiff nor any person purporting to act on Plaintiffs behalf had advised any TCICA of any objection to TCICA's valuation of the covered physical loss or damage sustained by the Property as a result of the Storm.⁷ And, as of December 2020, neither Plaintiff nor any person purporting to act on Plaintiffs behalf had advised TCICA of any objection to the sum total of payment(s) made by TCICA to Plaintiff under the Policy in connection with the Claim (*i.e.*, \$107,266.35).⁸ Accordingly, TCICA closed its file for the Claim in December 2020.⁹

³ See Exhibit A [Haneline Dec.] at ¶5.

⁴ See Joint Status Report [ECF No. 30] at IV.C.3; Exhibit A [Haneline Dec.] at ¶5; Exhibit B-1 [Plaintiff's RFA Resp.] at Resp. No. 2.

⁵ See Joint Status Report [ECF No. 30] at IV.C.4; Exhibit A [Haneline Dec.] at ¶6; Exhibit A-2 [TCICA Letter to Plaintiff – 09.14.20]; Exhibit A-3 [TCICA Letter to Plaintiff – 12.04.20].

⁶ See Exhibit A [Haneline Dec.] at ¶7.

⁷ See Exhibit A [Haneline Dec.] at ¶8.

⁸ See Exhibit A [Haneline Dec.] at ¶9.

⁹ See Exhibit A [Haneline Dec.] at ¶10.

6. After closing its file for the Claim in December 2020, TCICA engaged in no further communications with Plaintiff or any person purporting to act on Plaintiffs behalf regarding the Claim until September 2022.¹⁰ when Plaintiff requested (for the first time) that TCICA reconsider the coverage determination and claim valuation set forth in TCICA's Claim-related letters dated September 14, 2020 and December 4, 2020.¹¹

7. As an act of good faith, TCICA agreed to conduct a reinspection of the Property.¹² That reinspection occurred on or about December 1, 2022.¹³ However, as set forth in a letter to Plaintiff dated November 17, 2022, TCICA undertook these activities subject to a complete reservation of rights under the Policy.¹⁴ Specifically, in agreeing to the reinspection requested by Plaintiff in September 2022 (and completing same on or about December 1, 2022), TCICA never altered its coverage position regarding Plaintiff's Claim, nor did it ever change its valuation of the covered physical loss or damage sustained by the Property as a result of the Storm.¹⁵ Further, in agreeing to the reinspection requested by Plaintiff in September 2022 (and completing same on or about December 1, 2022), TCICA never advised Plaintiff of any change in TCICA's coverage position regarding the Claim, nor did it ever advise Plaintiff of any change in TCICA's valuation of the covered physical loss or damage sustained by the Property as a result of the Storm.¹⁶

¹⁰ See Exhibit A [Haneline Dec.] at ¶11.

¹¹ See Joint Status Report [ECF No. 30] at IV.C.5; Exhibit A [Haneline Dec.] at ¶12.

¹² See Exhibit A [Haneline Dec.] at ¶13.

¹³ See Joint Status Report [ECF No. 30] at IV.C.6; Exhibit A [Haneline Dec.] at ¶13.

¹⁴ See Exhibit A [Haneline Dec.] at ¶13; Exhibit A-4 [TCICA's ROR Letter – 11.17.22].

¹⁵ See Exhibit A [Haneline Dec.] at ¶13.

¹⁶ See Exhibit A [Haneline Dec.] at ¶13.

8. On or about May 10, 2023, TCICA sent a letter to Plaintiff conveying: (a) TCICA's coverage determination with respect to the Claim (as originally communicated to Plaintiff in TCICA's letters dated September 14, 2020 and December 4, 2020) remained unchanged; (b) TCICA's valuation of the covered physical loss or damage sustained by the Property as a result of the Storm (as originally communicated to Plaintiff in TCICA's letters dated September 14, 2020 and December 4, 2020) remained unchanged; and (c) TCICA would be making no additional payment(s) to Plaintiff under the Policy in connection with the Claim. A true and correct copy of TCICA's Claim-related letter to Plaintiff dated May 10, 2023.¹⁷

9. On or about August 7, 2023, TCICA sent an email to Plaintiff's retained legal counsel, Shane Mecham, conveying: (a) TCICA's coverage determination with respect to the Claim (as originally communicated to Plaintiff in TCICA's letters dated September 14, 2020 and December 4, 2020) remained unchanged; (b) TCICA's valuation of the covered physical loss or damage sustained by the Property as a result of the Storm (as originally communicated to Plaintiff in TCICA's letters dated September 14, 2020 and December 4, 2020) remained unchanged; and (c) TCICA would be making no additional payment(s) to Plaintiff under the Policy in connection with the Claim.¹⁸

10. After December 4, 2020, TCICA never changed in its coverage determination with respect to the Claim,¹⁹ nor did it ever advise Plaintiff or any representative of Plaintiff of any change in TCICA's coverage determination with respect to the Claim.²⁰

¹⁷ See Joint Status Report [ECF No. 30] at IV.C.7; Exhibit A [Haneline Dec.] at ¶14; Exhibit A-5 [TCICA Letter to Plaintiff – 05.10.23].

¹⁸ See Joint Status Report [ECF No. 30] at IV.C.8; Exhibit A [Haneline Dec.] at ¶15; Exhibit A-6 [TCICA Email to Plaintiff's Counsel – 08.23.23].

¹⁹ See Exhibit A [Haneline Dec.] at ¶16.

²⁰ See Exhibit A [Haneline Dec.] at ¶17.

11. After December 4, 2020, TCICA never changed its valuation of the covered physical loss or damage sustained by the Property as a result of the Storm,²¹ nor did it ever advise Plaintiff or any representative of Plaintiff of any change in TCICA's valuation of the covered physical loss or damage sustained by the Property as a result of the Storm.²²

12. After December 4, 2020, TCICA never agreed to make any additional payment to Plaintiff in connection with the Claim,²³ never advised Plaintiff or any representative of Plaintiff that TCICA would be making any additional payment to Plaintiff in connection with the Claim,²⁴ and never made any additional payment to Plaintiff in connection with the Claim.²⁵

13. Plaintiff commenced this action against TCICA on October 31, 2023,²⁶ alleging causes of action for breach of contract and breach of the common-law duty of good faith and fair dealing.²⁷ In answering Plaintiff's Complaint, TCICA asserted that "Plaintiff's claims are barred (in whole or in part) on the basis that Plaintiff has failed to satisfy all conditions precedent to the recovery it seeks in this lawsuit."²⁸

14. TCICA also asserted—among other defenses—that Plaintiff's causes of action are barred by applicable statute(s) of limitation.²⁹ In so doing, TCICA made specific reference to the

²¹ See Exhibit A [Haneline Dec.] at ¶18.

²² See Exhibit A [Haneline Dec.] at ¶19.

²³ See Exhibit A [Haneline Dec.] at ¶20.

²⁴ See Exhibit A [Haneline Dec.] at ¶21.

²⁵ See Exhibit A [Haneline Dec.] at ¶22.

²⁶ See generally Plaintiff's Complaint [ECF No. 3]; Joint Status Report [ECF No. 30] at IV.C.9; Exhibit B-1 [Plaintiff's RFA Resp.] at Resp. No. 6.

²⁷ See Plaintiff's Complaint [ECF No. 3] at ¶¶44-53, 57-61.

²⁸ TCICA's Answer [ECF No. 19] at ¶66.c.

²⁹ See TCICA's Answer [ECF No. 19] at ¶¶66.b , 66.j.

Policy's provision stating:

* * *

E. PROPERTY LOSS CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

* * *

4. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form unless:

- a. There has been full compliance with all of the terms of this Coverage Form; and
- b. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.³⁰

* * *

15. Thereafter, on or about March 14, 2024, counsel for the parties conferred and filed a Joint Status Report [ECF No. 16] with this Court in which the parties stipulated and agreed to many of the material facts supporting this Motion and the dispositive relief TCICA seeks herein.³¹

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Hunt v. Cromartie*, 526 U.S. 541, 549 (1999). The movant bears the initial burden of making a *prima facie* demonstration of the absence of a genuine issue of material fact and entitlement to judgment as a

³⁰ Exhibit A-1 [Policy] at MP T1 02 02 05 at 33 of 39.

³¹ See Joint Status Report [ECF No. 30] at IV.C.1-9.

matter of law, which may include “simply . . . pointing out to the court a lack of evidence for the nonmovant on an essential element of the nonmovant’s claim.” *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670–71 (10th Cir. 1998) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553, 91 L. Ed. 2d 265 (1986)). The non-movant then has the burden of “doing ‘more than simply show[ing] there is some metaphysical doubt as to the material facts.’” *Neustrom v. Union Pac. R. Co.*, 156 F.3d 1057, 1066 (10th Cir. 1998), *as amended on denial of reh’g* (Nov. 30, 1998). The non-movant must “go beyond the pleadings and ‘set forth specific facts’ that would be admissible in evidence in the event of trial from which a rational trier of fact could find for the nonmovant.” *Id.*

Further, a defendant may use a motion for summary judgment to test an affirmative defense which entitles that party to a judgment as a matter of law. The defendant making such a motion must demonstrate that no disputed material fact exists regarding the affirmative defense asserted. *See Hutchinson v. Pfeil*, 105 F.3d 562, 564 (10th Cir.1997); *Miller v. Shell Oil Co.*, 345 F.2d 891, 893 (10th Cir.1965). *See Pfeil*, 105 F.3d at 564; *Miller*, 345 F.2d at 893. If the defendant meets this initial burden, the plaintiff must then demonstrate with specificity the existence of a disputed material fact. If the plaintiff fails to make such a showing, the affirmative defense bars his claim, and the defendant is then entitled to summary judgment as a matter of law. *See Pfeil*, 105 F.3d at 564; *Miller*, 345 F.2d at 893.

IV. **ARGUMENT AND AUTHORITIES**

As the undisputed facts make clear, the only two causes of action Plaintiff’s has asserted against TCICA in this action are time-barred as a matter of law. Accordingly, summary judgment is appropriate with respect to Plaintiff’s claims for breach of contract and alleged breach of the common-law duty of good faith and fair dealing .

A. Plaintiff's cause of action against TCICA for breach of contract is time-barred as a matter of law.

Plaintiff claims TCICA breached the applicable Policy by failing to pay for all covered damage allegedly caused by the April 22, 2020 storm made the basis of its property insurance Claim. However, with respect to claims for breach of contract, the Policy under which Plaintiff seeks coverage includes suit-limitation provision that required Plaintiff to bring any suit under the Policy “within 2 years after the date on which the direct physical loss or damage occurred.”³²

Courts applying Oklahoma law have repeatedly held that such suit-limitation clauses are not only unambiguous and enforceable, but also sufficient to support summary judgment in favor of an insurer in the event of non-compliance by an insured. *See, e.g., Parrish v. Farmers Ins. Co.*, No. 21-CV-00280-GKF-SH, 2022 WL 3139750, at *7-*8 (N.D. Okla. Aug. 5, 2022) (Frizzell, J.) (granting summary judgment for insurer due to insured's failure to comply with policy's one-year suit-limitation provision); *Barraza v. State Farm Fire & Cas. Co.*, No. 21CV-0202-CVE-CDL, 2023 359518, at *5-*8 (N.D. Okla. Jan. 23, 2023) (Eagen, J.) (granting summary judgment for insurer on insured's breach of contract claim because it was barred by policy's one-year suit-limitation provision); *Hayes v. State Farm Fire and Cas. Co.*, 855 F.Supp.2d 1291, 1300-01 (W.D. Okla. 2012) (granting summary judgment for insurer on insured's breach-of-contract claim because insured failed to comply with policy's one-year suit-limitation provision); *Burwell v. Mid-Century Ins. Co.*, 142 P.3d 1005, 1009 (Okla. Civ. App. 2006) (upholding a summary judgment for insurer where there was “no controversy of fact concerning the date of loss or the date of commencement of th[e] suit, [which was] untimely commenced more than one year after the loss”).

³² *See Exhibit A-1* [Policy] at MP T1 02 02 05 at 33 of 39. Notably, this two-year suit-limitation period exceeds the one-year statutory floor for property insurance policies. *See* Okla. Stat. tit. 36, § 3617; *Wagnon v. State Farm Fire & Cas. Co.*, 951 P.2d 641, 644 (Okla. 1997) (holding that, under § 3617, property insurance “can be limited to a one-year period in which to file an action”).

And here, Plaintiff indisputably failed to comply with the clear and unambiguous requirement(s) of the Policy's suit-limitation provision. Indeed, as the stipulated facts make clear, Plaintiff did not commence this suit until more than three and one-half years after the April 22, 2020 Storm that allegedly caused the property damage made the basis of Plaintiff's insurance Claim.³³ Accordingly, under the plain language of the Policy and Oklahoma law, Plaintiff's cause of action for breach of contract is barred as a matter of law, and TCICA is entitled to summary judgment on that claim.

This is true whether the Policy's two-year suit-limitation provision is viewed as a condition precedent to Plaintiff's breach of contract claim (a matter on which Plaintiff bears the burden of proof) or a Policy-based defense to that cause of action (on which TCICA bears the initial burden of proof). More specifically, if the Policy's two-year suit-limitation provision is viewed as a Policy-based condition precedent to Plaintiff's right to bring suit under the Policy and recover on its claim for breach of contract,³⁴ the evidence conclusively establishes that Plaintiff failed to satisfy that condition. Alternatively, if the Policy's two-year suit-limitation provision is viewed as a Policy-based defense against Plaintiff's claim for breach of contract,³⁵ no disputed material fact exists with respect to that defense here. In either event, TCICA is entitled to summary judgment on Plaintiff's breach of contract claim.

³³ See Plaintiff's Complaint [ECF No. 3] at ¶18; Joint Status Report [ECF No. 30] at IV.C.2 and IV.C.9; Exhibit A [Haneline Dec.] at ¶4; Exhibit B-1 [Plaintiff's RFA Resp.] at Resp. Nos. 1.and 6; Exhibit B-3 [WCCES Report – 08.05.22] at REN000270 (noting reported loss date of April 22, 2020).

³⁴ See TCICA's Answer [ECF No. 19] at ¶66.c (“Asserting that “Plaintiff's claims are barred ... on the basis that Plaintiff has failed to satisfy all conditions precedent to the recovery it seeks in this lawsuit”).

³⁵ See TCICA's Answer [ECF No. 19] at ¶66.b (asserting that “Plaintiff's claims are barred ... by the statute(s) of limitation applicable to Plaintiff's asserted causes of action against Defendant (as modified by the Policy)"); *see id.* at ¶66.j (asserting that Plaintiff's claims are barred by Policy's two-year suit limitation).

B. Plaintiff's cause of action against TCICA for common-law bad faith is time-barred as matter of law.

Plaintiff's cause of action for common-law bad faith is likewise time-barred. Oklahoma law imposes a two-year statute of limitations on claims for bad faith, and such an action accrues "when a litigant first could have maintained his action to a successful conclusion." *Morgan v. State Farm Mut. Auto. Ins. Co.*, 488 P.3d 743, 746 (Okla. 2021) (quoting Okla. Stat. tit. 12, § 95(A)(3), and citing *Lewis v. Farmers Ins. Co.*, 681 P.2d 67, 70 (Okla. 1983)). Stated differently, a cause of action for bad-faith handling of an insurance claim begins to run at "the point in time a plaintiff can successfully prove the elements of a tort claim." *Lee v. Phillips & Lomax Agency, Inc.*, 11 P.3d 632, 634 (Okla. 2000).

"In the context of bad faith denials of insurance coverage, the statute of limitations begins to run when the claim for insurance coverage is denied." *Mid-Continent Cas. Co. v. KCHM, Inc.*, No. CIV-19-259-RAW, 2020 WL 13866271, at *4 (E.D. Okla. Dec. 21, 2020); *see also Blue v. Universal Underwriters Life Ins. Co.*, 612 F. Supp. 2d 1201, 1203-04 (N.D. Okla. 2009) (Payne, J.) ("Plaintiff's bad faith cause of action arose on December 31, 2003, when her claim was denied."); *Ake v. Cent. United Life Ins. Co.*, No. CIV-17-937-R, 2018 WL 5986756, at *3 (W.D. Okla. Nov. 14, 2018) ("Plaintiff's bad faith tort likely accrued on ... the date Defendant denied the claim."); *Newport v. USAA*, 11 P.3d 190, 195 (Okla. 2000) ("The essence of a bad faith action 'is the insurer's unreasonable, bad faith conduct, including the unjustified withholding of payment due under a policy.'") (quoting *McCorkle v. Great Atl. Ins. Co.*, 637 P.2d 583, 587 (Okla. 1981)).

Here, Plaintiff alleges TCICA breached the duty of good faith and fair dealing by failing to conduct a reasonable investigation of Plaintiff's Storm-damage Claim and failing to pay all

benefits Plaintiff was entitled to receive under the Policy.³⁶ At the very latest, this alleged cause of action accrued in December 2020, when TCICA: (a) completed its evaluation of Plaintiff's Claim; (b) advised Plaintiff of TCICA's valuation of the covered physical loss or damage sustained at the Property as a result of the Storm; (c) issued its final Claim payment to Plaintiff, and (d) closed its file for the Claim.³⁷ Because Plaintiff did not commence this action against TCICA until October 31, 2023 (nearly three years later),³⁸ Plaintiff's cause of action against TCICA for common-law bad faith is time barred as a matter of law, and TCICA is entitled to summary judgment on that claim.³⁹

V. CONCLUSION

Because all claims Plaintiff has asserted against TCICA in this lawsuit are time-barred, summary judgment is appropriate as to all such claims. TCICA thus respectfully request that the Court grant this Motion for Summary Judgment in its entirety. TCICA further requests that, upon entering such final judgment: (a) all relief requested by Plaintiff in this action be denied; (b) Plaintiff take nothing by its claims; and (c) TCICA be granted such other and further relief to which it may be justly entitled, whether at law or in equity.

³⁶ See, e.g., Plaintiff's Complaint [ECF No. 3] at ¶¶57-61; Exhibit B-2 [Plaintiff's Designation of Experts 10.18.24]; Exhibit B-3 [WCCES Report – 08.05.22] at REN000310; Exhibit B-2 [Plaintiff's Designation of Experts 10.18.24] (noting that Stan Williams of WCCES will offer expert testimony on behalf of Plaintiff regarding “the manner in which defendants handled plaintiff's insurance claim”).

³⁷ See Exhibit A [Haneline Dec.] at ¶¶5-10; ; Exhibit A-2 [TCICA Letter to Plaintiff – 09.14.20]; Exhibit A-3 [TCICA Letter to Plaintiff – 12.04.20]; Exhibit B-3 [WCCES Report – 08.05.22] at REN000270 (noting reported loss date of April 22, 2020).

³⁸ See generally Plaintiff's Complaint [ECF No. 3]; Joint Status Report [ECF No. 30] at IV.C.9; Exhibit B-1 [Plaintiff's RFA Resp.] at Resp. Nos. 6.

³⁹ Or, stated differently, no disputed material fact exists regarding the application of TCICA's statute-of limitations defense, thus entitling TCICA to summary judgment on Plaintiff's cause of action for breach of the common-law duty of good faith and fair dealing as a matter of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on January 17, 2025, a true and correct copy of the foregoing was served upon all known counsel of record pursuant to the Federal Rules of Civil Procedure as follows:

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