SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

----------X

HOFSTRA UNIVERSITY, ST. JOHN'S UNIVERSITY

Plaintiff,

- v -

UNITED EDUCATORS,

Defendant.

----------X

INDEX NO. 653697/2024

MOTION DATE 07/18/2025

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 147, 148, 149, 150

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion to dismiss is granted.

Background

During the outbreak of COVID-19, universities (including the Plaintiffs Hofstra and St. John's) moved temporarily to an online-only education. As a result, various class actions were brought against the Plaintiffs (the "Underlying Actions), seeking among other damages tuition reimbursement. Both Plaintiffs carried an insurance policy issued by Defendant United Educators ("UE"), a member-owned reciprocal risk retention group. UE issued coverage denials to the claims submitted by Plaintiffs and declined to defend or indemnify either Plaintiff in the Underlying Actions. In July of 2022, Defendant invoked their right to demand mediation between the parties prior to litigation pursuant to the terms of the policies. Plaintiffs allege that Defendant "dragged its feet" in setting up a mediation date and agreeing to a mediator. Individual mediations for Hofstra and St. John's took place in May and June of 2023,

respectively. After the short mediation sessions, UE still refused to defend or indemnify Plaintiffs.

In July of 2024, Plaintiffs brought this present proceeding, initially pleading claims for breach of contract and declaratory judgment. The complaint was amended as of right in August of 2024, in order to more clearly delineate the breach of contract and declaratory judgment claims. Defendant moved to dismiss the first amended complaint, and as a result this Court issued an order denying the motion. That order found that the policy exclusions barred coverage for tuition reimbursement claims, but that dismissal was premature given the potential for covered claims in the Underlying Actions. UE then answered the first amended complaint, and both parties have appealed the order denying the motion to dismiss. Plaintiffs made a motion to further amend the complaint, which was granted. The Second Amended Complaint counts one through 4 are substantially the same as those in the first amended complaint, but new claims for violation of General Business Law § 349 and breach of the covenant of good faith and fair dealing were added for each Plaintiff. Now, Defendant brings a motion to dismiss the second amended complaint.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a "defense founded upon documentary evidence." Dismissal is only warranted under this provision if "the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." *Leon v. Martinez,* 84 N.Y.2d 83, 88 [1994]. A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, "[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

Defendant moves to dismiss the GBL § 349 claims in the Second Amended Complaint on the grounds that they 1) fail to allege consumer-oriented deceptive conduct and 2) are time-barred. They move to dismiss the breach of good faith claims on the grounds that they 1) are duplicative of the breach of contract claims and 2) fail to state a cause of action. Plaintiffs oppose. For the reasons that follow, the GBL § 349 claims and the breach of the implied covenant claims are dismissed as duplicative of the breach of contract claims.

The GBL § 349 Claims Adequately Allege Consumer-Orientated Conduct but Are Duplicative of the Breach of Contract Claim

The Second Amended Complaint contains two claims for a breach of GBL § 349, with Plaintiffs alleging that UE committed a deceptive act or practice in denying all claims relating to tuition reimbursement after COVID-19 instead of individually evaluating the claims. This section of the General Business Law bans "[de]captive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state." As part of

establishing a prima facie case, it must be alleged that the defendant's conduct was "consumer-oriented", that it was "deceptive or misleading in a material way", and that as a result the plaintiff was injured. *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A.*, 85 N.Y.2d 20, 25 [1995]. Defendant moves to dismiss the two § 349 causes of action on the grounds that they have failed to allege consumer-orientated conduct. Such conduct "need not be repetitive or recurring [but …] must have a broad impact on consumers at large, private contract disputes unique to the parties would not fall within the ambit of the statute." *New York Univ. v. Cont'l Ins. Co.*, 87 N.Y.2d 308, 320 [1995].

The basis for Plaintiffs' claims under this section is that Defendant acted deceptively in handling the claims, denying coverage, and in responding to the mediation requests. The policies at issue are alleged to be standard form insurance policies that are issued to all or most of UE's customer base. Defendant argues that given their status as a member-owned risk retention group and that they can issue policies only to educational institutions that are members, they did not engage in consumer-orientated conduct.

Regarding the issue of insurance policies as consumer-orientated conduct, the Court of Appeals has held that a tailored insurance policy that a university purchased and had adjusted to meet their particular "wishes and requirements" was not consumer-orientated conduct. *New York Univ.*, at 321. But in contrast, allegations regarding "a standard-issue policy provided to an individual consumer" is sufficient to satisfy the consumer-orientated conduct pleading requirement. *Acquista v. N.Y. Life Ins. Co.*, 285 A.D.2d 73, 82 [1st Dept. 2001]; *see also Rockefeller Univ. v. Aetna Cas. & Sur. Co.*, 231 A.D.3d 457, 459 [1st Dept. 2024] (holding that "a standard form policy provided to multiple consumers" satisfies pleading requirement); *Perlbinder v. Vigilant Ins. Co.*, 190 A.D.3d 985, 989 [2nd Dept. 2021] (holding that "conduct

that might potentially affect similarly situated consumers" is consumer-oriented). It would be premature to dismiss the GBL § 349 claims as not alleging consumer-orientated conduct. It has been alleged that Defendant has a large consumer base of educational instituted from K-12 schools through to universities, that the polices at issue were standard forms issued to multiple consumers, and that UE acted uniformly in their handling of COVID-19 tuition reimbursement claims. Just because UE's customer base is limited to educational members does not necessarily mean that any policy dispute for their policies are private contractual disputes. The general public does not need to be literally any member of the public to sustain a GBL § 349 claim, it is sufficient to allege that the same behavior was applied to all similarly situated educational institutes. Under the standard of a motion to dismiss, Plaintiffs have adequately alleged consumer-orientated conduct.

While Plaintiffs have sufficiently pled a GBL § 349 claim, the alleged conduct and injury are duplicative of their breach of contract claim. Plaintiffs argue that the costs incurred in attending the mediation constitute a separate injury, but these are clearly akin to litigation costs incurred as a result of the conduct that Plaintiffs allege to constitute a breach of contract – that is, the handling of their claims, denial of coverage, and alleged failure to individually evaluate each claim. Because the injury alleged is wholly duplicative of the injury alleged for the breach of contract claims, counts five and six of the amended complaint must be dismissed.

The Breach of the Duty of Good Faith and Fair Dealing Claims Are Likewise Duplicative

The Second Amended Complaint also contains two claims for breach of the covenant of good faith and fair dealing. Plaintiffs allege that Defendant had a "company-wide strategy to deny all claims for COVID-19 lawsuits regardless of merit" and that they failed to conduct a reasonable investigation of their claims. When claims for breach of the duty of good faith and

breach of contract "allege different conduct on the part of the defendant and seek different categories and/or types of damages", they are not duplicative. *East Ramapo Cent. Sch. Dist. V. New York Schs. Ins. Reciprocal*, 199 A.D.3d 881, 886 [2nd Dept. 2021] *see also New York Botanical Garden v. Allied World Asur. Co. (U.S.) Inc.*, 206 A.D.3d 474, 476 [1st Dept. 2022] (holding that a breach of the implied covenant claim was not duplicative when despite "some overlap in the facts alleged, it relies upon different facts and seeks different damages from the contract claim"). Here, however, the mediation was required by the policy before bringing litigation. Therefore, the damages incurred regarding the mediation would be part of the overall damages that Plaintiffs seek for the alleged breach of contract regarding the claim denial. The Second Amended Complaint states that the damages sought for the breach of the implied covenant claim result from "UE's refusal to provide coverage." But the damages sought for the breach of contract claim also stem from the refusal of provide coverage and therefore are duplicative.

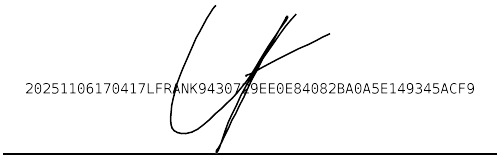
The New Claims are Timely

Although the new claims are subject to dismissal as duplicative of the breach of contract claim and therefore the Court does not need to reach the issue of timeliness, in the interests of thoroughness it will do so. One of the grounds by which Defendant moves to dismiss the new claims is that they are untimely, as the claim denial was in May of 2020. But mediation was a contractual condition precedent to the bringing of this suit, and mediation did not resolve until 2023. New York law provides for the application of equitable estoppel when a defendant takes "affirmative steps to prevent a plaintiff from bringing a claim and then assert[s] the statute of limitations as a defense." *Zumpano v. Quinn,* 6 N.Y.3d 666, 674 [2006]. Here, as the Plaintiffs could not have brought suit until after the mediation, the Court finds that it would be equitable to

apply estoppel to their claims. Therefore, the new claims are not time barred, although they are duplicative. Accordingly, it is hereby

ADJUDGED that the motion is granted; and it is further

ORDERED that counts four through eight of the second amended complaint are dismissed.



11/6/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
	X	**GRANTED**		**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**