APPENDIX

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APPENDIX A — SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED FEBRUARY 12, 2026

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

February 12, 2026, Decided

25-1272-cv

W.A. GRIFFIN, M.D.,

Plaintiff-Appellant,

v.

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, UNITED STATES FIDELITY AND GUARANTY COMPANY,

Defendants-Appellees.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of February, two thousand twenty-six.

Appeal from a judgment of the United States District Court for the District of Connecticut (Vernon D. Oliver, *Judge*).

Appendix A

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court, entered on May 15, 2025, is **AFFIRMED AS MODIFIED**.

Plaintiff-Appellant W.A. Griffin, M.D., proceeding *pro se*, appeals from the district court's judgment dismissing her complaint for lack of standing and failure to state a claim. Griffin sued Defendants-Appellees Travelers Property Casualty Company of America ("Travelers") and United States Fidelity and Guaranty Company ("Fidelity"), asserting breach of contract and tort claims. Griffin, a physician and the owner of Dermatology Boutique LLC ("Dermatology Boutique"), alleged that she discovered hidden cameras near her office's entrance that she believed "were strategically placed to spy on [her] and Dermatology Boutique patients and office staff," and sought to recover under insurance policies with Travelers and Fidelity. Supplemental App'x at 259. The defendants moved to dismiss the amended complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The district court granted the motion, concluding that Griffin lacked standing to sue under the Fidelity Policy and had otherwise failed to state a claim against either defendant. *See generally Griffin v. Travelers Prop. Cas. Co. of Am.*, No. 24-CV-1298, 2025 U.S. Dist. LEXIS 96223, 2025 WL 1432766 (D. Conn. May 14, 2025). We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision to affirm.

"Where a district court grants a defendant's Rule 12(b)(1) motion to dismiss, an appellate court will review the district court's factual findings for clear error and its legal conclusions *de novo*." *Aurecchione v. Schoolman Transp. Sys., Inc.*, 426 F.3d 635, 638 (2d Cir. 2005). "[W]e review *de novo* a district court's dismissal of a complaint pursuant to Rule 12(b)(6), construing the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." *Moreira v. Société Générale, S.A.*, 125 F.4th 371, 387 (2d Cir. 2025) (internal quotation marks and citation omitted). Because Griffin "has been *pro se* throughout, [her] pleadings and other filings are interpreted to raise the strongest claims they suggest." *Sharikov v. Philips Med. Sys. MR, Inc.*, 103 F.4th 159, 166 (2d Cir. 2024).

The district court correctly dismissed Griffin's amended complaint.[1] First, we agree with the district court that Griffin lacked standing to sue for breach of contract under the Fidelity Policy's property coverage section. "Where, as here, jurisdiction is predicated on diversity of citizenship, a plaintiff must have standing under both Article III of the Constitution and applicable

1. Both sides agree that Georgia law applies to Griffin's claims. Moreover, in ruling on the motion to dismiss, the district court properly considered the insurance policies because they were integral to Griffin's amended complaint. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002) ("[A] plaintiff's reliance on the terms and effect of a document in drafting the complaint is a necessary prerequisite to the court's consideration of the document on a dismissal motion . . . ." (emphasis omitted)).

state law in order to maintain a cause of action." *Mid-Hudson Catskill Rural Migrant Ministry, Inc. v. Fine Host Corp.*, 418 F.3d 168, 173 (2d Cir. 2005). In this case, Griffin was not a party to the Fidelity Policy—the only "Named Insured" was "Dermatology Boutique LLC." Supplemental App'x at 4. Under Georgia law, "[i]n order for a third party to have standing to enforce, or reform, a contract, it must appear clearly from the contract that it was intended for the benefit of the third party. The mere fact that the third party would benefit from performance of the agreement is not alone sufficient." *Bouboulis v. Scottsdale Ins. Co.*, 860 F. Supp. 2d 1364, 1373 (N.D. Ga. 2012) (internal quotation marks and citation omitted). The Fidelity Policy's property coverage section did not clearly reflect that it was intended for the benefit of Griffin. Unlike other sections of the Policy, the property coverage section used "you" and "your," which the Policy defined as "the Named Insured," Supplemental App'x at 97, and the sole "Named Insured" was "Dermatology Boutique LLC," *id.* at 7.

Griffin argues that she had standing because she was the sole owner of Dermatology Boutique LLC. However, "a member of a limited liability company . . . is considered separate from the company and is not a proper party to a proceeding by or against a limited liability company, solely by reason of being a member of the limited liability company." *Glob. Diagnostic Dev., LLC v. Diagnostic Imaging of Atlanta*, 284 Ga. App. 66, 643 S.E.2d 338, 341 (Ga. Ct. App. 2007) (internal quotation marks and citation

omitted). Nor could Griffin substitute Dermatology Boutique LLC into the action because, as a *pro se* litigant, Griffin could not bring claims on behalf of her LLC in federal court. *See Lattanzio v. COMTA*, 481 F.3d 137, 140 (2d Cir. 2007) (per curiam) ("[A] limited liability company . . . may appear in federal court only through a licensed attorney.").

Although the district court correctly concluded that Griffin, on behalf of herself, lacked standing to sue for breach of the Fidelity Policy's property coverage section, it did not state that the dismissal of the claim was without prejudice. *See Green v. Dep't of Educ. of City of New York*, 16 F.4th 1070, 1074 (2d Cir. 2021) ("[D]ismissals for lack of subject matter jurisdiction must be without prejudice, rather than with prejudice." (internal quotation marks and citation omitted)). We therefore affirm the judgment as modified to specify that the dismissal of the claim for breach of the Fidelity Policy was without prejudice. *See United States v. Adams*, 955 F.3d 238, 250-51 (2d Cir. 2020) (recognizing this Court's authority to modify and affirm judgments under 28 U.S.C. § 2106).

Second, because Griffin's brief raises no challenge to the district court's dismissal of her claim for breach of the Travelers Policy, she has abandoned any related arguments. *See Green*, 16 F.4th at 1074. In any event, we agree with the district court that she failed to state a claim for breach of the Travelers Policy. That Policy provided coverage when the insured became "legally obligated to

pay as damages" for certain claims, *see* Supplemental App'x at 190-91, but Griffin did not allege that she had become legally obligated to pay any damages.

Finally, the district court correctly concluded that Griffin failed to state a claim for bad faith denial of her insurance claims. "[T]he exclusive remedy for an insurance company's bad faith refusal to pay a claim is set forth in OCGA § 33-4-6." *Anderson v. Georgia Farm Bureau Mut. Ins. Co.*, 255 Ga. App. 734, 566 S.E.2d 342, 345 (Ga. Ct. App. 2002). Under Section 33-4-6, an insurer is liable if (1) there was "a loss which is covered by a policy of insurance"; (2) the insurer refused to pay "within 60 days after a demand" by the policyholder; and (3) "such refusal was in bad faith." OCGA § 33-4-6(a). Additionally, "[b]ad faith claims under the Georgia insurance code . . . are available only as between insureds and their insurers." *J. Smith Lanier & Co. v. Se. Forge, Inc.*, 280 Ga. 508, 510, 630 S.E.2d 404 (2006) (internal quotation marks and citation omitted).

Here, Griffin lacks standing to bring a claim under Section 33-4-6 against Fidelity because, as explained above, she is not the insured party under the applicable policy. *See id.*; *see also Owens v. Allstate Ins. Co.*, 216 Ga. App. 650, 455 S.E.2d 368, 369, (Ga. Ct. App. 1995) (reasoning that, because the plaintiff "was not the policyholder with [the insurer], she had no standing to complain of any alleged negligence or bad faith on the part of [the insurer] under OCGA § 33-4-6"). Thus, although

we affirm the district court's dismissal of Griffin's claim against Fidelity for bad faith denial, we do so for lack of standing rather than for failure to state a claim. Accordingly, as with the claim for breach of contract, we likewise affirm the judgment as modified to specify that the dismissal of the claim against Fidelity for bad faith denial of insurance coverage is without prejudice. *See Adams*, 955 F.3d at 250-51.

As to her claim against Travelers, Griffin failed to plausibly allege a covered event. As described above, Griffin did not plausibly allege that she or her LLC had become "legally obligated to pay damages" such that coverage under the Travelers Policy applied. Thus, the district court correctly concluded that she failed to state a claim for bad faith refusal against Travelers.

* * *

We have considered Griffin's remaining arguments and conclude that they are without merit. Accordingly, we **AFFIRM AS MODIFIED** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

/s/ Catherine O'Hagan Wolfe

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT, DATED MAY 14, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

3:24-CV-1298 (VDO)

W.A. GRIFFIN,

Plaintiff,

v.

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, FIDELTY & GUARANTY INSURANCE COMPANY,

Defendants.

May 14, 2025, Decided;
May 14, 2025, Filed

MEMORANDUM & ORDER GRANTING MOTION TO DISMISS

VERNON D. OLIVER, United States District Judge:

W.A. Griffin ("Plaintiff") brings this action against Travelers Property Casualty Company of America ("Travelers") and Fidelity & Guaranty Insurance Company ("Fidelity") (collectively "Defendants"). Plaintiff alleges both contractual and tortious claims, asserting that Defendants breached their contracts and inflicted

pain and suffering upon Plaintiff when they denied her coverage under two insurance policies after she discovered hidden cameras at her place of business.

Defendants move to dismiss the amended complaint because: (1) Plaintiff lacks standing to assert claims for breach of contract under the commercial policy issued by Fidelity ("Fidelity Policy"), because she is not a named insured or a party to the contract; (2) the Amended Complaint fails to allege "direct physical loss of or damage to property," which is a prerequisite to the coverage Plaintiff seeks under the Fidelity Policy; (3) the policy issued by Travelers ("Travelers Policy") is a third-party excess and umbrella liability policy, which is not triggered by the allegations in the Amended Complaint; and (4) Plaintiff's tort claim is not recognized under Georgia law, and even if construed as a cause of action for statutory bad faith, the Amended Complaint fails to allege sufficient facts to state such a claim.

For the reasons set forth below, the Court **grants** Defendants' motion to dismiss.

I. BACKGROUND

A. Factual Background

The Court accepts as true the factual allegations in the amended complaint and the documents integral to the claims and draws all reasonable inferences in Plaintiff's favor for the purpose of deciding Defendants' motion.

Appendix B

1. The Insurance Policies

This case arises from alleged breaches of two insurance contracts. Thus, it is first important to explore the nature of these policies.

a. Fidelity Policy

Fidelity issued to Dermatology Boutique LLC a commercial insurance policy (i.e., the Fidelity Policy), bearing the policy number BIP-2W870828, with a policy period beginning on March 9, 2023 and then renewed on March 9, 2024.[1] This policy contains a first-party commercial property insurance coverage section,[2] which provides coverage in two pertinent ways.[3] First, it insures Dermatology Boutique LLC's office at 550 Peachtree Street, NW, Atlanta, GA 30308 ("Premises") against "direct physical loss or damage to the Covered Property at the Premises described in the Declarations caused by or resulting from a Covered Clause of Loss."[4] Second, it contains a Business Income (and Extra Expense) Coverage Form, which provides that Fidelity will pay for:

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1. Defs. Ex. A, ECF No. 21-2 at 2, 173, 175, 177.

2. In addition to the commercial property insurance coverage, the Fidelity Policy also contains a third-party commercial liability coverage section. (*Id.* at 110-60.) However, Plaintiff does not appear to have made a claim pursuant to that coverage. (*See* Pl. Ex A, ECF No. 26-1; Am. Compl., ECF No. 17 at 4 n.2.)

3. Defs. Ex. A at 13-106

4. *Id.* at 53.

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1. The Actual Loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration"; and

2. The actual Extra Expense you incur during the "period of restoration"; caused by direct physical loss of or damage to property at premises that are described in the Declarations and for which a Business Income and Extra Expense Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss or damage to personal property in the open or personal property in a vehicle, the described premises includes the area within 1,000 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you only occupy part of the site at which the described premises are located, your premises means:

(1) The portion of the building that you rent, lease or occupy; and

(2) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.[5]

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5. *Id.* at 93.

b. Travelers Policy

Travelers issued to Dermatology Boutique LLC an Excess Follow-Form and Umbrella Liability Insurance Policy (i.e., "Travelers Policy"), bearing policy number CUP-2W875732-23-42, with a policy period of March 9, 2023, to March 9, 2024.[6]

The Travelers Policy provides three types of coverage. Coverage A provides excess follow form liability coverage for "those sums, in excess of the 'applicable underlying limit,' that the insured becomes legally obligated to pay as damages . . . ."[7] Coverage B provides umbrella liability coverage for "those sums in excess of the 'self-insured retention' that the insured becomes legally obligated to pay as damages because of 'bodily injury', 'property damage', 'personal injury' or 'advertising injury' . . . ."[8] Coverage C provides reimbursement for "crisis management service expenses" when certain conditions are met.[9]

2. The Incident Giving Rise to the Alleged Breach

Plaintiff, a doctor and the owner of Dermatology Boutique LLC, the business occupying the Premises, alleges that on June 27, 2024, she discovered a minimum

6. Defs. Ex. B, ECF No. 21-3 at 3.

7. *Id.* at 6.

8. *Id.* at 7.

9. *Id.* at 8.

of eight hidden cameras embedded into four exit signs located less than 1,000 feet from the entrance of her office.[10] According to Plaintiff, these cameras were placed "strategically" to spy on Plaintiff, her staff, and her clients.[11] That same day, Plaintiff filed a police report, but the police have not yet identified the culprits.[12] Due to the stress caused by this purported invasion of privacy, Plaintiff suffered a "mental breakdown," sought medical treatment for her mental health, and was hospitalized for three days.[13] In addition to negatively effecting her mental health, Plaintiff alleges that the "discovery of the hidden cameras diminished the value of [her] property, is a form of property damage," and rendered her unable to enjoy her workplace.[14]

On July 15, 2024, Plaintiff submitted a business interruption claim pursuant to the Fidelity Policy and an umbrella coverage claim pursuant to the Travelers Policy.[15] With her submission, she included evidence concerning the discovery of the hidden cameras, including a police report, incident report, audio clip, and video clip.[16] According to Plaintiff, her claim was denied because

10. Am. Comp. ¶¶ 1, 2, 3, 8, 9.

11. *Id.* at ¶ 8.

12. *Id.* at ¶ 9.

13. *Id.* ¶ 10.

14. *Id.* at ¶ 11.

15. *Id.* ¶ 1, 12

16. *Id.* ¶ 13.

Travelers did not believe that hidden cameras constitute property damage.[17] Plaintiff asserts that, in denying her coverage, Defendants breached the terms of the insurance policies, because "under the circumstances outlined in this specific case, hidden cameras are considered a form of property damage and directly impacted [her] practice operations."[18] Plaintiff further alleges that, in addition to contract damages, she is entitled to compensation, because "Defendants falsified claims data . . . [and] Defendants['] conduct has caused [her] additional pain and suffering."[19]

B. Procedural History

On August 12, 2024, Plaintiff brought this suit against Travelers.[20] On September 9, 2024, Travelers filed a motion to dismiss, asserting, *inter alia*, that Plaintiff sued the wrong party, as Travelers did not issue nor is party to the Fidelity Policy.[21] In an apparent attempt to cure her complaint, Plaintiff filed an Amended Complaint on September 9, 2024, adding Fidelity as a defendant and raising claims pursuant to the Travelers Policy.[22] On October 15, 2024, Defendants, again, filed a motion

17. *Id.* ¶ 15.

18. *Id.* at 5.

19. *Id.*

20. Compl., ECF No. 1.

21. ECF No. 15, at 1

22. Am. Compl., ECF No. 17.

to dismiss.[23] On November 4, 2024, Plaintiff filed an opposition to the motion to dismiss,[24] and Defendants filed a reply on November 19, 2024.[25]

II. LEGAL STANDARD

A party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted[.]" Fed. R. Civ. P. 12(b)(6). "On a motion to dismiss, all factual allegations in the complaint are accepted as true and all inferences are drawn in the plaintiff's favor." *Littlejohn v. City of New York*, 795 F.3d 297, 306 (2d Cir. 2015). "To survive dismissal, the pleadings must contain 'enough facts to state a claim to relief that is plausible on its face[.]'" *Buon v. Spindler*, 65 F.4th 64, 76 (2d Cir. 2023) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). A claim is plausible "when the plaintiff pleads factual content that 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, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

Documents filed *pro se* must be liberally construed and interpreted "to make 'the strongest arguments that they suggest.'" *Wiggins v. Griffin*, 86 F.4th 987, 996 (2d Cir. 2023) (quoting *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006)); *see also Erickson v.*

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23. Defs. Mot., ECF No. 21.

24. Pl. Opp., ECF No. 26.

25. Defs. Reply, ECF No. 28.

Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007). "Even in a *pro se* case, however, 'although a court must accept as true all of the allegations contained in a complaint, that tenet is inapplicable to legal conclusions, and threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.'" *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (quoting *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009)). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013) (internal citation and quotation marks omitted).

III. CHOICE OF LAW

As a preliminary matter, the Court must consider whether the laws of Connecticut or the laws of Georgia govern this matter. A federal court sitting in diversity follows the choice-of-law rules of the forum state. *See, e.g., Thea v. Kleinhandler*, 807 F.3d 492, 497 (2d Cir. 2015); *Bigio v. Coca-Cola Co.*, 675 F.3d 163, 169 (2d Cir. 2012); *Curley v. AMR Corp.*, 153 F.3d 5, 12 (2d Cir. 1998).

Connecticut courts have adopted the "most significant relationship approach of the Restatement (Second) for analyzing choice of law issues involving contracts." *Gen. Accident Ins. Co. v. Mortara*, 314 Conn. 339, 101 A.3d 942, 946 (Conn. 2014) (cleaned up). Accordingly, a choice-of-law analysis for an insurance contract involves an analysis of §§ 6, 188, and 192 of the Restatement (Second) of Conflict of Laws ("Restatement"). *Id.*

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Section 188 of the Restatement provides that, *inter alia*, "the contacts to be taken into account . . . to determinate the law applicable to an issue include: (a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties." Restatement § 188(2).

Section 188 also incorporates the provisions of the subsequent § 193, which is specifically applicable to contracts of insurance. Section 193 provides that coverage under an insurance contract is "determined by the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy . . . ." Restatement § 193. Connecticut courts have held this creates a "rebuttable presumption in favor of the state where the insured risk is located." *Vt. Mut. Ins. Co. v. Ciccone*, 900 F. Supp. 2d 249, 252 (D. Conn. 2012) (citing *Reichhold Chems., Inc. v. Hartford Accident and Indem. Co.*, 252 Conn. 774, 781 (Conn. 2000)). Here, the insured risk is the Premises in Georgia. Accordingly, there is a rebuttable presumption that Georgia law governs this dispute. As Plaintiff has failed to rebut this presumption, the Court applies Georgia law to Plaintiff's contract claims.

When analyzing choice-of-law questions with respect to statutory and common law claims sounding in tort or equity, Connecticut courts, again, apply the "most significant relationship" test, utilizing the factors set forth in §§ 6 and 145 of the Restatement. *See, e.g., Reclaimant*

Corp. v. Deutsch, 332 Conn. 590, 211 A.3d 976, 982-83 n.1 (Conn. 2019); *W. Dermatology Consultants, P.C. v. VitalWorks, Inc.*, 322 Conn. 541, 153 A.3d 574, 584 (Conn. 2016); *Jaiguay v. Vasquez*, 287 Conn. 323, 948 A.2d 955, 972 (Conn. 2008). Section 145 of the Restatement provides, in relevant part, "[t]he rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6." Restatement § 145(1).

To assist in evaluating the policy choices set forth in §§ 145(1) and 6(2) of the Restatement, Connecticut courts utilize the factors set forth in § 145(2): "(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered." *Id.* § 145(2); *W. Dermatology Consultants, P.C.*, 153 A.3d at 584.

In the present case, these factors highly favor Georgia law, as it is where all of the relevant conduct occurred. Accordingly, the Court applies the law of Georgia to Plaintiff's tort claim.

IV. DISCUSSION

Defendants move to dismiss the amended complaint because: (1) Plaintiff lacks standing to assert claims for breach of contract under the Fidelity Policy, because she

is not a named insured or a party to the contract; (2) the Amended Complaint fails to allege "direct physical loss of or damage to property," which is a prerequisite to the coverage Plaintiff seeks under the Fidelity Policy; (3) the Travelers Policy is a third-party excess and umbrella liability policy, which is not triggered by the allegations in the amended complaint; and (4) Plaintiff's tort claim is not recognized under Georgia law, and even if construed as a cause of action for statutory bad faith, the Amended Complaint fails to allege sufficient facts to state such a claim.[26]

A. Plaintiff's Claims Pursuant to the Fidelity Policy

Defendants first contend that Plaintiff's claim pursuant to the Fidelity Policy fails because Plaintiff lacks standing to assert a claim under the property coverage section of the Policy.[27] For the following reasons, the Court agrees.

When construing insurance policies, Georgia courts, "begin, as with any contract, with the text of the contract itself. Where the contractual language unambiguously governs the factual scenario before the court, the court's job is simply to apply the terms of the contract as written, regardless of whether doing so benefits the carrier or the insured." *Reed v. Auto-Owners Ins. Co.*, 284 Ga. 286, 667 S.E.2d 90, 92 (Ga. 2008). An insurance contract is

26. Def. Mot. at 1-2.

27. Def. Mem., ECF No 21-1 at 8-9.

considered "ambiguous only if its terms are subject to more than one reasonable interpretation." *State Farm Mut. Auto. Ins. Co. v. Staton*, 286 Ga. 23, 685 S.E.2d 263, 265 (Ga. 2009). The "[c]onstruction and interpretation of an insurance contract are matters of law for the court." *Landmark Am. Ins. Co. v. Khan*, 307 Ga. App. 609, 705 S.E.2d 707, 710 (Ga. 2011). In the present case, the Fidelity Policy's language unambiguously covers solely Dermatology Boutique LLC as to property damage claims.

The Business Income (and Extra Expense) Coverage Form in the Fidelity Policy provides coverage for "[t]he actual loss of Business Income *you* sustain due to the necessary 'suspension' of *your* 'operations' during the 'period of restoration' . . . caused by direct physical loss of or damage to the property."[28] The policy further clarifies, "the words 'you' and 'your' refer to the Named Insured in the Declarations."[29] The Declarations page identifies *only* Dermatology Boutique LLC as a named insured—not Plaintiff.[30] Despite this, Plaintiff states that "Dr. Griffin filed a business interruption and umbrella coverage claim with Travelers . . . in accordance with the plan documents."[31] Put another way, Plaintiff—not Dermatology Boutique LLC—filed the claim and this suit.

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28. Defs. Ex. A at 93 (emphasis added).

29. *Id.* at 51, 93.

30. *Id.* at 3.

31. Am. Compl. ¶12.

Plaintiff, however, insists that she is a party to a named insured. In support of this argument, she cites language from the Travelers Policy and from a separate section of the Fidelity Policy, the third-party commercial liability coverage section, under which Plaintiff does not assert a claim. In both her amended complaint and her memorandum in opposition to the motion to dismiss, Plaintiff quotes language that identifies the "insured" as "an individual . . . of a business of which you are the sole owner."[32] Plaintiff mistakenly believes this language applies to her claims. However, Plaintiff conflates two distinct portions of the policy, the commercial liability coverage section, which provides third-party coverage, and the property coverage section, which provides first-party property coverage.

Under Georgia law, a person, like Plaintiff, who is not a party to an insurance contract, can sue the insurer only if the policy authorizes it. *See Bouboulis v. Scottsdale Ins. Co.*, 860 F. Supp. 2d 1364, 1373 (N.D. Ga. 2012). For such authorization to be valid, it "must appear clearly from the contract that it was intended for the benefit of the third party. The mere fact that the third party would benefit from performance of the agreement is not alone sufficient." *Id.* (quoting *Satilla Cmty. Serv. Bd. v. Satilla Health Servs. Inc.*, 275 Ga. 805, 573 S.E.2d 31, 35 (Ga. 2002)). "Unless such an intention is shown on the face

32. *See* Am. Compl. ¶ 4; Pl. Opp. at 2; Defs. Ex. A at 123; Defs. Ex B. at 9. The Court notes that Plaintiff fails to provide citations, and it is, thus, unclear whether she is quoting from the Travelers Policy or the commercial liability coverage section of the Fidelity Policy, which she did not attached to her briefing.

of the contract, defendant is under no duty to the third party." *Id.* (Hines J., concurring).

Accordingly, because Plaintiff is not a named insured and the property coverage section of the policy does not authorize any person or entity other than the named insured to sue Fidelity to recover benefits, Plaintiff lacks standing to sue.

However, even if Plaintiff *did* have standing, her claim would still fail as she does not allege facts sufficient to establish "direct physical loss of or damage to the property," as required by the language of the Fidelity Policy. Rather, she attempts to convert a business interruption claim into a property damage claim.

Georgia courts have long interpreted "direct physical loss of or damage to the property," as requiring more than intangible interruption to a business; rather, it requires "an actual change in insured property then in a satisfactory state, occasioned by accident or other fortuitous event directly upon the property causing it to become unsatisfactory for future use or requiring that repairs be made to make it so." *AFLAC Inc. v. Chubb & Sons, Inc.*, 260 Ga. App. 306, 581 S.E.2d 317, 320 (Ga. Ct. App. 2003); *see also Henry's La. Grill, Inc. v. Allied Ins. Co. of Am.*, 35 F.4th 1318, 1320-21 (11th Cir. 2022). Put another way, there must be an allegation that "involves a tangible change to the property" that renders it unsuitable for use without repair. *H. J. Russell & Co. v. Landmark Am. Ins. Co.*, 369 Ga. App. 6, 891 S.E.2d 531, 534 (Ga. Ct. App. 2023)

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In her amended complaint, Plaintiff does not allege that the installation of the cameras rendered the Premises unsuitable for use. Rather, she conclusorily asserts that the "*discovery* of the hidden cameras diminished the value of [her] property, is a form of property damage, . . . invaded the [her] privacy," and forced her to abandon the Premises.[33] Yet, she does not explain how the cameras themselves caused physical damage to her property. And neither diminishment of value nor invasion of privacy qualify as "an actual change in insured property . . . causing it to become unsatisfactory for future use or requiring that repairs be made to make it so." *AFLAC*, 581 S.E.2d at 319. At most, her allegations are that the nontangible event of the *discovery* of the cameras, not the installation itself, rendered the property unsuitable for use.

Indeed, Plaintiff's complaint is more akin to that of loss of use of claim, absent physical damage. Georgia courts have consistently held that mere loss of use of property fails to satisfy the direct physical loss or damage requirement. Rather, there must be some physical, tangible change to property that requires repair or replacement before it is usable again, unless the language of the contract specifies otherwise. *See Ne. Ga. Heart Ctr., P.C. v. Phoenix Ins. Co.*, No. 12-CV-245, 2014 U.S. Dist. LEXIS 205607, 2014 WL 12480022, at *6 (N.D. Ga. May 23, 2014). In the present case, however, the Fidelity Policy expressly excludes coverage for "loss of use."[34]

33. Am. Compl. ¶¶ 10, 11 (emphasis added).

34. Defs. Ex. A at 78.

Accordingly, even if Plaintiff had standing, she has failed to establish property damage as required by the language of the Fidelity Policy. Thus, her contract claim pursuant to the Fidelity Policy is dismissed.

B. Plaintiff's Claims Pursuant to the Travelers Policy

Defendants next contends that Plaintiff's claims pursuant to the Travelers Policy fail because she has failed to allege that an insured has become legally obligated to pay damages.[35] For the foregoing reasons, the Court agrees.

The Amended Complaint explains little about Plaintiff's claim pursuant to the Travelers Policy. However, a plain reading of the Travelers Policy establishes that Plaintiff has failed to allege a claim pursuant to it. The Travelers Policy does not provide first-party property coverage. Rather, it is solely a third-party excess and umbrella liability policy, and renders Travelers responsible for providing coverage only when an insured becomes "legally obligated to pay damages" for certain third-party claims, but only to the extent such damages exceed the applicable "underlying limit."[36] The Amended Complaint does not allege that Plaintiff has become legally obligated to pay damages on any claim. Accordingly, there is no available coverage under the Travelers Policy, and Plaintiff's contractual claim pursuant to it is dismissed.

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35. Defs. Mem. at 13.

36. Defs. Ex. B at 6-7.

C. Plaintiff's Tort Claims

Finally, Defendants assert that Plaintiff's tort claims for pain and suffering fail because she has failed to establish a special relationship between the parties.[37] For the forgoing reasons, the Court agrees.

Absent a special relationship beyond that of insurer-insured, "the exclusive remedy [under Georgia law] for an insurance company's bad faith refusal to pay a claim is set forth in O.C.G.A. § 33-4-6." *Anderson v. Georgia Farm Bureau Mut. Ins. Co.*, 255 Ga. App. 734, 566 S.E.2d 342, 345 (Ga. Ct. App. 2002); *see also Poland v. Nationwide Mut. Ins. Co.*, No. 24-CV-002, 2024 U.S. Dist. LEXIS 122203, 2024 WL 3378392, at *3 (S.D. Ga. July 11, 2024) ("Furthermore, absent a special relationship beyond simply insurer and insured, denial of coverage for allegedly false or 'bad faith' reasons is specifically and exclusively covered under O.C.G.A. § 33-4-6 and a separate tort claim is not actionable."). No special relationship warranting departure from the exclusivity of O.C.G.A. § 33-4-6 exists here. Thus, Plaintiff's claim for "[t]ort for pain and suffering" fails as a matter of law.

In rebutting Defendants' argument, Plaintiff responds that Defendants acted in bad faith in denying her coverage. However, this argument also fails because she has not established a *prima facie* case of bad faith. "To prevail on a bad faith claim, a plaintiff must establish (1) a covered event of loss, (2) a refusal to pay the claim within

37. Defs. Mem. at 13-14.

sixty days of a demand by policy holder, and (3) that the payment was refused in bad faith." *Lowery v. Amguard Ins. Co.*, No. 20-CV-5148, 2021 U.S. Dist. LEXIS 252534, 2021 WL 6752234, at *4 (N.D. Ga. July 30, 2021); *Howell v. Southern Heritage Ins. Co.*, 214 Ga. App. 536, 448 S.E.2d 275, 276 (Ga. Ct. App. 1994) ("An insurance company is liable for penalties under O.C.G.A. § 33-4-6 when it fails to pay a covered loss within 60 days after a demand for payment has been made and there has been a finding that the refusal to pay was in bad faith."). In the present case, Plaintiff has failed to establish any of these elements. At base, and as previously discussed, she has not established a covered event of loss under either the Travelers Policy or Fidelity Policy—a prerequisite to a establishing the second and third elements. Accordingly, Plaintiff's tort claims are dismissed.

V. CONCLUSION

For the reasons set forth above, the Court **GRANTS** the motion to dismiss (ECF No. 21) Plaintiff's claims.

The Clerk is respectfully directed to close this case.

SO ORDERED.

Hartford, Connecticut
May 14, 2025

/s/ Vernon D. Oliver
VERNON D. OLIVER
United States District Judge