

# Denial of Insurers' Motion to Dismiss Is Reminder of Powerful Tool for New York Policyholders

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The Northern District of New York [recently denied an insurer's motion to dismiss](#) a bad faith claim, finding that the complaint alleged that the insurer violated New York's law against deceptive acts and practices. The statute provides key protections to policyholders and is an important tool that policyholders can leverage against insurers who wrongfully deny coverage.

## Case Background

In *PAR Technology Corp. v. Travelers Property Casualty Co. of America*, No. 6:22-CV-1121 (BKS/TWD) (E.D.N.Y.), PAR bought commercial general liability policies from Travelers. In 2019, PAR was sued for violating the Illinois Biometric Privacy Act. PAR provided notice to Travelers and sought both defense and indemnity coverage. But Travelers did not respond to the notice for a full year, according to PAR's complaint. When Travelers finally responded, it denied coverage. PAR eventually settled the underlying claims.

PAR then brought suit against Travelers for breach of contract, bad faith, and violation of New York's statute against deceptive acts (General Business Law § 349). GBL § 349 prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service."

Travelers moved to dismiss PAR's complaint for violations of GBL § 349. It argued that (1) the complaint failed to allege consumer-oriented conduct that has a broader impact on consumers at large and (2) the complaint fails to allege that Travelers engaged in materially deceptive conduct because their reliance on the wrong policy provision and failure to respond to the notice was a "mistake."

## The Court's Decision

The Court denied Traveler's motion to dismiss, finding that PAR had adequately alleged violations of GBL § 349. The Court explained that, to show a violation of GBL § 349, the plaintiff must allege "(1) the defendant's conduct was consumer-oriented; (2) the defendant's act or practice was deceptive or misleading in a material way; and (3) the plaintiff suffered an injury as a result of the deception."

The Court found that PAR's complaint satisfied the first two prongs; the Court did not address the third prong (injury).

### ***Consumer Oriented Conduct***

The Court noted that contract disputes unique to the parties do not fall within the scope of the statute, but that the requirement is satisfied by showing that the conduct at issue "potentially affects similarly situated consumers." The Court ruled that the denial of coverage has the potential to affect other similarly situated consumers because the policy at issue was a standard form that Travelers also sold to other consumers in the state. This requirement was thus adequately alleged.

### ***Materially Deceptive Conduct***

This prong is satisfied when "defendant's actions . . . are likely to mislead a reasonable consumer acting reasonably under the circumstances." The Court found that Travelers' delay in responding to the notice and reference to the wrong policy sections were misleading. It also stated that whether Travelers' actions were reasonable is a question for the jury.

## **Analysis & Implications**

The Court rejected Travelers' narrow reading of the statute. Travelers argued that the "consumer oriented conduct" prong required that the denial affect other consumers. Travelers' reading would be almost impossible to satisfy in the insurance context because coverage denials only directly affect the policyholder (and any third parties claiming coverage). Instead, the Court stated that the denial is consumer-oriented if the policy is a form that was sold to other policyholders. Presumably, an insurer would apply its policy language consistently, so it would also deny coverage to any other policyholders with the same form and the same claim.

The Court's ruling means that any policyholder with a standard form policy can invoke GBL § 349. Since most policyholders have standard forms, that means the statute's protections are available to most policyholders. This is an important tool that policyholders can use as leverage against insurers who wrongly deny coverage.

The statute also helps police a familiar tactic. Insurers often try to delay paying for as long as possible in the hope of making policyholders take a lower settlement. GBL § 349 does not permit this — Travelers' alleged delay supported the Court's finding that the complaint had adequately alleged materially deceptive conduct.

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