

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

<b>SARAH LANCASTER,</b>	:	
	:	
<b>Plaintiff,</b>	:	<b>CIVIL ACTION NO. 3:16-2438</b>
	:	
<b>v.</b>	:	<b>(JUDGE MANNION)</b>
	:	
<b>NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,</b>	:	
	:	
<b>Defendant.</b>	:	
	:	

**MEMORANDUM**

Before the court is a partial motion to dismiss filed by the defendant Nationwide Mutual Fire Insurance Company (“Nationwide”). (Doc. [6](#)). The defendant seeks to dismiss a breach of contract claim brought by the plaintiff Sarah Lancaster who is insured under an insurance policy with Nationwide. Based on the foregoing, the defendant’s motion will be **GRANTED**.

**I. FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>**

This case arises out of a May 21, 2015 fire that occurred at the plaintiff’s residence located at 106 Hope Way, Scranton, Pennsylvania. (Doc. [1](#), ¶¶1,

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<sup>1</sup> The facts alleged in the plaintiff’s complaint are accepted as true in considering the defendant’s motions to dismiss. See [Batchelor v. Rose Tree Media Sch. Dist.](#), 759 F.3d 266, 271 (3d Cir. 2014); [Fleischer v. Standard Ins. Co.](#), 679 F.3d 116, 120 (3d Cir. 2012).

5). The plaintiff sustained damages to her home with an estimated cost of repair in excess of \$75,000.00. (*Id.*). The plaintiff alleges she was insured by Nationwide for accidental fire damage at the time of the fire. (*Id.*, ¶4). Nationwide is an insurance corporation incorporated in Ohio with a place of business in Scranton, Pennsylvania.<sup>2</sup> (*Id.*, ¶2).

Within a day of the fire, the plaintiff submitted a claim for the loss to Nationwide. (*Id.*, ¶6). Written notice was also forwarded on May 29, 2015, August 11, 2015, and September 9, 2015. (*Id.*, ¶7). Nationwide denied the plaintiff's claim asserting that the plaintiff's policy had been cancelled due to non-payment. (*Id.*, ¶8).

The plaintiff asserts that her insurance policy requires thirty-day notice to the plaintiff before cancellation by Nationwide and that renewal of the policy is required unless this notice is provided. (*Id.*, ¶¶13, 15). The plaintiff also asserts that her insurance policy requires Nationwide to notify the plaintiff's mortgagee, Habitat for Humanity, of cancellation at least ten days prior to the cancellation. (*Id.*, ¶17). Nationwide never mailed the plaintiff notice of the

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<sup>2</sup> Nationwide's principle place of business is in Ohio. See *Habitat for Humanity of Lackawanna Cty., Inc. v. Nationwide Mut. Fire Ins. Co.*, No. 3:16-cv-00364-MEM, (Doc. [1](#), ¶7) (M.D. Pa. Mar. 1, 2016). This court's subject matter jurisdiction is therefore premised on the existence of diversity of citizenship. [28 U.S.C. §1332\(c\)\(1\)](#).

premium required to renew or maintain the policy prior to cancellation and did not provide any notice to the plaintiff of the intended cancellation. (*Id.*, ¶¶12, 14). In addition, Nationwide did not notify Habitat for Humanity of the cancellation. (*Id.*, ¶18). Nonetheless, Nationwide did not renew the policy when it expired and the plaintiff's claim for the May 21, 2015 fire was denied. (*Id.*, ¶¶8,16).

On December 9, 2016, the plaintiff filed a complaint in this court alleging two counts against Nationwide, breach of Contract (Count I) and bad faith in violation of 42 PA. CONS. STAT. §8371, Pennsylvania's bad faith statute (Count II).<sup>3</sup> (Doc. [1](#)). On February 13, 2017, Nationwide filed the current, partial motion to dismiss Count I, along with a brief in support. (Docs. [6-7](#)). Nationwide's motion seeks to dismiss the plaintiff's breach of contract claim based on a one-year limitations clause for filing suit under the policy. To date,

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<sup>3</sup> There is also an action pending before this court between the plaintiff's mortgagee, Habitat for Humanity, and Nationwide. *Habitat for Humanity of Lackawanna Cty., Inc. v. Nationwide Mut. Fire Ins. Co.*, No. 3:16-cv-00364-MEM (M.D. Pa.). On March 1, 2016, Nationwide filed a notice of removal in this court as it related to a state court action filed by Habitat for Humanity on January 26, 2016. See *id.*, Doc. [1](#) (M.D. Pa. Dec. 9, 2016). Habitat for Humanity's state court action is identical to the plaintiff's action here. Their complaint alleges breach of contract (Count I) and a violation of Pennsylvania's bad faith statute. *Id.*, Doc. [1](#)-1. On March 23, 2017, the court consolidated both cases for purposes of discovery only. (Doc. [12](#)).

the plaintiff has not responded to Nationwide's motion. The motion is now ripe for review.

## II. STANDARD OF REVIEW

The defendant's motion to dismiss is brought pursuant to the [Federal Rule of Civil Procedure Rule 12\(b\)\(6\)](#). This rule provides for the dismissal of a complaint, in whole or in part, if the plaintiff fails to state a claim upon which relief can be granted. [FED. R. CIV. P. 12\(b\)\(6\)](#). The moving party bears the burden of showing that no claim has been stated, [Hedges v. United States, 404 F.3d 744, 750 \(3d Cir. 2005\)](#), and dismissal is appropriate only if, accepting all of the facts alleged in the complaint as true, the plaintiff has failed to plead "enough facts to state a claim to relief that is plausible on its face," [Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 \(2007\)](#) (abrogating "no set of facts" language found in [Conley v. Gibson, 355 U.S. 41, 45–46 \(1957\)](#)). The facts alleged must be sufficient to "raise a right to relief above the speculative level." [Twombly, 550 U.S. at 555](#). This requirement "calls for enough fact[s] to raise a reasonable expectation that discovery will reveal evidence" of necessary elements of the plaintiff's cause of action. [Id. at 556](#). Furthermore, in order to satisfy federal pleading requirements, the plaintiff

must “provide the grounds of his entitlement to relief,” which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” [Phillips v. County of Allegheny, 515 F.3d 224, S31 \(3d Cir. 2008\)](#) (brackets and quotations marks omitted) (quoting [Twombly, 550 U.S. at 555](#)).

In considering a motion to dismiss, the court generally relies on the complaint, attached exhibits, and matters of public record. [Sands v. McCormick, 502 F.3d 263 \(3d Cir. 2007\)](#). The court may also consider “undisputedly authentic document[s] that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the [attached] documents.” [Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 \(3d Cir. 1993\)](#). Moreover, “documents whose contents are alleged in the complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered.” [Pryor v. Nat’l Collegiate Athletic Ass’n, 288 F.3d 548, 560 \(3d Cir. 2002\)](#). However, the court may not rely on other parts of the record in determining a motion to dismiss. See [Jordan v. Fox, Rothschild, O’Brien & Frankel, 20 F.3d 1250, 1261 \(3d Cir. 1994\)](#).

Lastly, the court should grant leave to amend a complaint before dismissing it as merely deficient. See, e.g., [Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.](#), 482 F.3d 247, 252 (3d Cir. 2007); [Grayson v. Mayview State Hosp.](#), 293 F.3d 103, 108 (3d Cir. 2002); [Shane v. Fauver](#), 213 F.3d 113, 116-17 (3d Cir. 2000). "Dismissal without leave to amend is justified only on the grounds of bad faith, undue delay, prejudice, or futility." [Alston v. Parker](#), 363 F.3d 229, 236 (3d Cir. 2004).

### III. DISCUSSION

Nationwide's motion is based on a limitations period provided for in the plaintiff's policy. This provision states that "[a]ny action must be started within one year after the date of loss or damage." (Doc. [6](#)-2 at 34, ¶8).<sup>4</sup> The court

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<sup>4</sup> The plaintiff did not submit a copy of her policy as an exhibit attached to her complaint. As explained above, however, the court may consider "undisputedly authentic document[s] that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the [attached] documents." [Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.](#), 998 F.2d 1192, 1196 (3d Cir. 1993). The plaintiff has not disputed the authenticity of the defendant's attachment and the policy attached identifies the plaintiff as the insured. (Doc. [6](#)-2 at 13). The plaintiff's breach of contract claim clearly arises out of this policy. Accordingly, the court will consider this document in ruling on Nationwide's partial motion to dismiss.

agrees that this provision is controlling and will grant Nationwide's motion to dismiss Count I of the plaintiff's complaint.

There is no dispute that Pennsylvania law governs this action. "Under Pennsylvania law, an insurance contract is governed the law of the state in which the contract was made." [\*Meyer v. CUNA Mut. Ins. Soc'y\*, 648 F.3d 154, 162 \(3d Cir. 2011\)](#). The Supreme Court of Pennsylvania has set forth clearly established rules for the interpretation of insurance contracts, generally.

The task of interpreting an insurance contract is generally performed by a court rather than by a jury. The purpose of that task is to ascertain the intent of the parties as manifested by the terms used in the written insurance policy. When the language of the policy is clear and unambiguous, a court is required to give effect to that language. When a provision in a policy is ambiguous, however, the policy is to be construed in favor of the insured . . . . Contractual language is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense. Finally, in determining what the parties intended by their contract, the law must look to what they clearly expressed. Courts in interpreting a contract, do not assume that its language was chosen carelessly.

[\*401 Fourth Street, Inc. v. Investors Ins. Grp.\*, 879 A.2d 166, 171 \(Pa. 2005\)](#)

(internal citations, quotations, and alterations omitted).

Like other policy provisions, "[i]t is well settled that a limitation on the time for bringing suit under an insurance contract is a contractual undertaking

between the parties to the contract which is both valid and reasonable.” [Kramer v. State Farm Fire & Cas. Ins. Co.](#), 603 A.2d 192, 193 (Pa. Super. Ct. 1992) (citing [Lardas v. Underwriters Ins. Co.](#), 231 A.2d 740 (Pa. 1967)).

“Numerous courts have held that contractual limitations period[s] requiring the filing of suit within one year after the inception of loss or damage are reasonable.” [Moran Indus., Inc. v. Netherlands Ins., Co.](#), No. 4:12-cv-01435, 2014 WL 643723, at \*4 (M.D. Pa. Feb. 19, 2014); see also [Fennell v. Nationwide Mut. Fire Ins. Co.](#), 603 A.2d 1064, 1068 (Pa. Super. Ct. 1992) (collecting cases). Such provisions will be upheld unless they are waived. The insurer waives this provision when “the actions of the insurer lead the insured to believe the contractual period will not be enforced or where the insured’s failure to comply is induced by the actions of the insurer.” [Kramer](#), 603 A.2d at 193 (internal citation omitted).

Here, the plaintiff’s policy clearly provides that “[a]ny action must be started within one year after the date of loss or damage.” (Doc. [6-2](#) at 34, ¶8). The fire at the plaintiff’s residence occurred on May 21, 2015. (Doc. [1](#), ¶5). The plaintiff filed suit in this court on December 9, 2016, over a year after the date of loss. The plaintiff has not alleged that Nationwide led her to believe the one-year limitations period would not be enforced or that Nationwide

committed any actions that induced her to file her complaint after the one year deadline. See [Kramer, 603 A.2d at 193](#). As such, the court must enforce the one-year limitations period the parties agreed to. Any amendment to the breach of contract claim would be futile based on the clear language in the policy. Accordingly, the court will grant the defendant's motion and dismiss the plaintiff's breach of contract claim with prejudice. An appropriate order will follow.

*s/ Malachy E. Mannion*

**MALACHY E. MANNION**  
**United States District Judge**

**DATED: July 24, 2017**

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