

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

LYNDON SOUTHERN INSURANCE	)	
COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. CIV-25-38-J
	)	
WILLIAMS GROCERY, INC.; WILLIAMS	)	
FOODS, INC.; WILLIAMS HOLDING	)	
COMPANY; WENJEST CORPORATION;	)	
MORGANNE ARTERBERRY, as Mother	)	
and Next Friend of K.O. and K.M.O.;	)	
SAVANNAH LYNN RISTER and	)	
DAKOTA O'REAGAN, as Co-Personal	)	
Representatives of the Estate of	)	
MICHAEL O'REAGAN, JR.,	)	
	)	
Defendants.	)	

**ORDER**<sup>1</sup>

Before the Court is Plaintiff Lyndon Southern Insurance Company’s motion to dismiss the bad-faith counterclaim asserted by Defendants Williams Grocery, Inc., Williams Foods, Inc., Williams Holding Company, and Wenjest Corporation (collectively, the Williams Defendants). (Pl.’s Mot.) [Doc. No. 13]. The Williams Defendants responded in opposition. (Williams Defs.’ Resp.) [Doc. No. 16]. Plaintiff did not reply. For the reasons that follow, the Court grants Plaintiff’s motion.

**I. Background**<sup>2</sup>

Plaintiff seeks a declaratory finding that it has no duty to defend or indemnify the Williams Defendants in an underlying state court case. There, Morganne Arterberry, Savannah Lynn Rister,

---

<sup>1</sup> All page citations in this Order refer to the Court’s CM/ECF pagination.

<sup>2</sup> Unless otherwise indicated, the following factual background is drawn from Plaintiff’s complaint. (Compl.) [Doc. No. 1].

and Dakota O'Reagan—each a party here—allege that the Williams Defendants' negligence caused the death of Michael O'Reagan, an independent contractor they hired for electrical work at one of their grocery stores.

Central to this federal action, Plaintiff acknowledges it issued the Williams Defendants a commercial general liability policy before O'Reagan's death but insists it did so in reliance on their representation that they did not hire independent contractors.<sup>3</sup> And because the Williams Defendants' hiring of O'Reagan contradicted that representation, Plaintiff argues there is no coverage under a policy provision conditioning coverage on accurate disclosures. Nevertheless, Plaintiff continues to defend the Williams Defendants in the underlying state case under a full reservation of rights.

In their answer, the Williams Defendants assert a counterclaim for breach of the duty of good faith and fair dealing. *See* (Answer and Countercl.) [Doc. No. 12] at 5–7. They allege in support that Plaintiff was “fully aware” they hired independent contractors because (1) “[i]t would be almost impossible to conduct business without using independent contractors of one type or another,” and (2) despite representing they did not hire independent contractors, they still made clear they hired “plumbers, electricians, etc.” *Id.* at 7. On that basis, they conclude that Plaintiff's opposition to coverage is “clearly erroneous and asserted in bad faith.” *Id.*

Plaintiff now moves to dismiss the Williams Defendants' counterclaim pursuant to Federal Rule of Civil Procedure 12(b)(6), citing, among other deficiencies, their failure to allege damages. *See* Pl.'s Mot. at 1–7.

---

<sup>3</sup> Specifically, the Williams Defendants represented: “We don't hire independent contractors, but rather licensed, bonded, insured companies that specialize in what we need, i.e.: plumber, electrician, etc.” Compl. at 4.

## II. Legal Standard

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In assessing plausibility, courts “look to the elements of the particular cause of action, keeping in mind that the Rule 12(b)(6) standard does not require a plaintiff to set forth a prima facie case for each element.” *Safe Streets All. v. Hickenlooper*, 859 F.3d 865, 878 (10th Cir. 2017) (brackets and internal quotation marks omitted). Of course, “[t]he nature and specificity of the allegations required to state a plausible claim will vary based on context.” *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1215 (10th Cir. 2011). But “mere ‘labels and conclusions’ and ‘a formulaic recitation of the elements of a cause of action’ will not suffice; a plaintiff must offer specific factual allegations to support each claim.” *Id.* at 1214 (quoting *Twombly*, 550 U.S. at 555). In making that determination, courts accept all well-pleaded allegations as true and view them in the light most favorable to the nonmoving party. *See, e.g., Truman v. Orem City*, 1 F.4th 1227, 1235 (10th Cir. 2021).

## III. Discussion

“Under Oklahoma law, ‘[e]very contract . . . contains an implied duty of good faith and fair dealing.’” *Combs v. Shelter Mut. Ins. Co.*, 551 F.3d 991, 998–99 (10th Cir. 2008) (alterations in original) (*Wathor v. Mut. Assurance Adm’rs, Inc.*, 87 P.3d 559, 561 (Okla. 2004)). A breach of that duty gives rise to a bad-faith tort claim. *See Christian v. Am. Home Assurance Co.*, 577 P.2d 899, 904 (Okla. 1977). To state such a claim against an insurer under Oklahoma law, “the claimant must plead the following elements: (1) he was covered under the insurance policy and the insurer was required to take reasonable actions in handling the claim; (2) the insurer’s actions were

unreasonable under the circumstances; (3) the insurer failed to deal fairly and in good faith toward the insured in the handling of the claim; and (4) the breach of the duty of good faith and fair dealing was the direct cause of any damages sustained by the insured.” *Mass. Bay Ins. Co. v. Langager*, No. 16-CV-685-JED, 2017 WL 3586862, at \*2 (N.D. Okla. Aug. 18, 2017) (citing *Edens v. Netherlands Ins. Co.*, 834 F.3d 1116, 1128 (10th Cir. 2016)).

The Williams Defendants’ counterclaim does not allege any resulting damages. And the parties agree that despite their existing coverage dispute, Plaintiff continues to defend the Williams Defendants in the underlying case. *See* Compl. at 6; Answer and Countercl. at 6. So absent any elaboration, the Court declines to speculate as to what damages, if any, the Williams Defendants may have sustained.

#### IV. Conclusion

For the reasons above, the Court GRANTS Plaintiff’s motion to dismiss [Doc. No. 13].<sup>4</sup>

IT IS SO ORDERED this 5<sup>th</sup> day of June, 2025.



BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE

---

<sup>4</sup> The Court notes the Williams Defendants’ cursory request for leave to amend. *See* Williams Defs.’ Resp. at 3. But they offer no explanation as to how amendment could cure the defects in their counterclaim. Nor, in their three-page response—which contains only a single paragraph of argument—do they address the issue of damages at all. *See id.* at 1–3. So, absent any motion for leave filed within 7 days of this Order, the Court will proceed without the Williams Defendants’ counterclaim. *See Shepherd v. RSM Dev., Inc.*, No. CIV-19-129-R, 2019 WL 2167422, at \*3 (W.D. Okla. May 17, 2019) (observing that “leave to amend is appropriately sought in a separate motion complying with federal and local rules”).