

United States Court of Appeals
for the Fifth Circuit

No. 25-50953

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2026

Thomas B. Plunkett, III
Clerk

NFI APARTMENT MANAGEMENT, L.L.C.,

Plaintiff—Appellant,

versus

THIRD COAST INSURANCE COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:24-CV-1419

Before ELROD, *Chief Judge*, and RICHMAN and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Following a hailstorm in May of 2020, NFI Apartment Management, L.L.C. submitted a claim to its insurance provider, Third Coast Insurance Company. On July 21, 2020, Third Coast sent NFI a letter denying payment because the estimated value for the property damage was below the insurance policy's deductible but stated that NFI could submit information that might

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

lead it to reconsider its decision. NFI submitted a report from its engineer disputing the estimated value of the property damage, and representatives from both parties reinspected the property. On July 28, 2021, Third Coast informed NFI that it was closing the file on the claim because the estimated value of damage from the reinspection was still below the deductible. The parties continued to communicate about the claim. On July 23, 2024, NFI filed this lawsuit against Third Coast for breach of contract and violations of the Texas Insurance Code and Deceptive Trade Practices Act. The district court granted summary judgment to Third Coast, concluding that NFI's claims were barred by the applicable contractual and statutory limitations periods. We affirm.

I

On March 15, 2020, Third Coast issued an insurance policy to NFI. The policy provided coverage for several of NFI's properties, including an apartment complex located in San Antonio, Texas. The policy stipulated that "[n]o one may bring a legal action against [Third Coast] under this Policy unless . . . [t]he action is brought . . . within two (2) years and one (1) day after the date on which the cause of action accrues."

Less than three months after NFI purchased the policy, NFI submitted a claim to Third Coast alleging that a hailstorm caused damage to the apartment complex (the Claim). Third Coast retained an engineer and a building consultant to investigate the damage. On July 21, 2020, Third Coast sent a letter to NFI, which stated that Third Coast was "unable to issue any payment for [NFI's] loss" because "the covered loss," "estimated at \$37,058.29," did "not exceed the policy deductible of \$359,856.60." The letter also stated that if NFI was "aware of any new or different information or documentation that might lead [Third Coast] to reconsider [its] decision, please contact [it] immediately."

On September 21, 2020, Third Coast sent a follow-up email to NFI: “We sent the attached denial letter on 7/21 and have not heard back on this claim. If you are not in agreement please advise and present further support.” NFI responded the same day, informing Third Coast that it was “in the process of determining which engineer [it was] going to have at the site to dispute the findings by [Third Coast’s] engineering company” and that it would “let [Third Coast] know after [it] had [its] report.” A few months later, NFI submitted a report to Third Coast, and in March of 2021, representatives of NFI and Third Coast performed a joint inspection of the property. On May 21, 2021, Third Coast emailed NFI that the engineer discovered “some additional minor damage” during the reinspection, but that “not much changed from the first inspection.”

On July 28, 2021, Third Coast informed NFI that it would “proceed with closing [the] file” because the loss, which Third Coast’s building consultant estimated to be \$61,839.72, was “still well below the policy deductible.” That December, NFI’s engineer produced a supplemental report that disputed the findings made by Third Coast’s representatives. Then, on February 7, 2022, NFI’s counsel sent a 60-day pre-suit notice letter to Third Coast, attaching the supplemental report. The notice letter demanded that Third Coast “reverse its denial of the claim” and pay approximately \$1 million, and it alleged that Third Coast had “so far failed to settle this claim in good faith.”

Upon receipt, Third Coast “re-opened” the Claim, but only “to address the pre-suit notice/demand letters and subsequent lawsuit.” It immediately transferred the Claim to the “claims legal department,” which retained outside counsel. On April 8, 2022, Third Coast’s counsel responded to the pre-suit notice letter as follows:

Based on the information made available to [Third Coast] to date, [Third Coast] stands by its measure of [NFI's] claimed loss, which . . . is supported by and based upon the work product of an independent, third-party building consultant and an independent, third-party engineer. . . . Although [Third Coast] is confident in its claim determination, in a good faith effort to facilitate the resolution of any and all purported dispute(s) relating to [NFI's] Claim without resort to litigation, we invite you to contact us to discuss a mutually acceptable protocol for addressing and resolving the disputed issues . . . including a (re)inspection of the [property] pursuant to the Policy's 'GENERAL CONDITIONS' of coverage.

. . .

[N]either the writing of this letter, nor any actions taken by [Third Coast] or any of its authorized representatives in connection with the Policy or [NFI's] Claim, shall constitute or be deemed a waiver of, or an estoppel to assert, any of the rights and defenses [Third Coast] may have or that may arise under the Policy or applicable law.

NFI and Third Coast continued to correspond about the Claim so that the parties' respective representatives could reinspect the property. However, these discussions failed to resolve the dispute.

NFI filed suit in Texas state court on July 23, 2024, asserting claims for breach of contract and violations of the Texas Insurance Code and the Deceptive Trade Practices Act. Third Coast removed the case to the United States District Court for the Western District of Texas and moved for summary judgment, arguing that NFI's claims were barred by the policy's contractual limitations and the applicable statutory limitations. Third Coast maintained that NFI's claims accrued on July 21, 2020, when it sent NFI a letter refusing payment, or July 28, 2021, when it closed the Claim file. NFI filed a response in opposition, as well as a motion to compel discovery under

Federal Rule of Civil Procedure 56(d) seeking information that Third Coast withheld on the basis of attorney-client and work-product privileges. The district court granted Third Coast's motion for summary judgment and dismissed NFI's discovery motion as moot.

II

NFI challenges the district court's grant of summary judgment to Third Coast on the grounds that NFI's claims were time-barred. "We review a district court's grant of summary judgment *de novo*."¹ Because "this is a diversity case containing only state-law claims, Texas law governs."² "In Texas, '[c]auses of action accrue and statutes of limitations begin to run when facts come into existence that authorize a claimant to seek a judicial remedy.'³ "[I]n first-party insurance cases such as this one, 'limitations begin to run on the date coverage is denied.'⁴ "Although the denial-accrual date is usually 'a question of law,' the Texas Supreme Court has

¹ *Citigroup Inc. v. Fed. Ins. Co.*, 649 F.3d 367, 370 (5th Cir. 2011) (citing *Holt v. State Farm Fire & Cas. Co.*, 627 F.3d 188, 191 (5th Cir. 2010)).

² *Smith v. Travelers Cas. Ins. Co. of Am.*, 932 F.3d 302, 310 (5th Cir. 2019) (citing *Ocwen Loan Servicing, L.L.C. v. Berry*, 852 F.3d 469, 473 (5th Cir. 2017)).

³ *Id.* at 311 (alteration in original) (quoting *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 202 (Tex. 2011)).

⁴ *Id.* (quoting *Citigroup Inc.*, 649 F.3d at 373); *see Citigroup Inc.*, 649 F.3d at 373 ("A claim for breach of an insurance contract accrues and limitations begin to run on the date coverage is denied." (citing *Murray v. San Jacinto Agency, Inc.*, 800 S.W.2d 826, 828-29 (Tex. 1990))); *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 222 (Tex. 2003) ("A plaintiff's cause of action under the Texas Insurance Code for unfair claims settlement practices or under the DTPA based on denial of insurance coverage accrues on the date that the insurer denies coverage." (citing *Celtic Life Ins. Co. v. Coats*, 885 S.W.2d 96, 100 (Tex. 1994))).

acknowledged that it ‘may present questions of fact to be determined on a case-by-case basis.’”⁵

The limitations period for NFI’s breach-of-contract claim is, as stipulated in the policy, two years plus one day,⁶ and the limitations period for its statutory claims is two years.⁷ The district court concluded that NFI’s claims accrued on July 21, 2020, when Third Coast sent NFI a letter that stated it was “unable to issue any payment for [NFI’s] loss.” The court held that NFI’s claims were time-barred because NFI filed this lawsuit over four years later. In the alternative, the court held that “[e]ven if the [July 21, 2020] letter was ambiguous, the accrual date would still have occurred more than two years before [NFI] filed suit . . . because [Third Coast] closed [NFI’s] file on July 28, 2021.”

NFI argues that its claims did not accrue on July 21, 2020, because the letter that Third Coast sent to NFI that day “did not constitute an unequivocal denial of coverage but instead reflected an ongoing adjustment process based on an estimate and the insurer’s position that the claimed loss did not exceed the deductible.” NFI does not address the court’s alternative holding.

⁵ *Smith*, 932 F.3d at 311 (quoting *Knott*, 128 S.W.3d at 222).

⁶ *See* TEX. CIV. PRAC. & REM. CODE § 16.070(a) (“[A] person may not enter a stipulation, contract, or agreement that purports to limit the time in which to bring suit on the stipulation, contract, or agreement to a period shorter than two years.”); *see also Smith*, 932 F.3d at 311 (holding that the limitations period for a breach of contract was “two years plus one day” when “the contract provided that an action must be brought ‘within 2 years and one day from the date the cause of action first accrues’”).

⁷ *See* TEX. BUS. & COM. CODE § 17.565 (establishing DTPA’s two-year limitations period); TEX. INS. CODE § 541.162 (establishing Texas Insurance Code’s two-year limitations period); *see also Smith*, 932 F.3d at 311 (holding that the limitations period for claims under the DTPA and Texas Insurance Code is two years).

We agree with the district court that NFI's claims accrued on July 21, 2020. In *Provident Life & Accident Insurance Co. v. Knott*,⁸ the Supreme Court of Texas held that it does “not require an insurer to include ‘magic words’ in its denial of a claim if an insurer’s determination regarding a claim and its reasons for the decision are contained in a clear writing to the insured.”⁹ Applying *Knott*, a Texas court of appeals held in *Pace v. Travelers Lloyds of Texas Insurance Co.*¹⁰ that an insurer “unequivocally communicated a decision to deny coverage” when the insurer sent a letter to the insured that stated the insurer would “be unable to make payment” because the “damage to [the insured’s] property is not afforded coverage under the policy,” and the insurer “provided a reason for the decision.”¹¹ The court reached this conclusion even though the letter provided: “If you have additional information that you feel may have an impact on this coverage decision or should you have any questions concerning this claim please forward same to me”¹² The court explained that “the fact that the [insurer’s letter] left open the possibility that new information could potentially cause a different decision to be reached” did not create “uncertainty whether a decision had been made.”¹³ “Although the . . . letter invited [the insured] to provide any additional information he felt might have an impact on the decision, it did not *request* any further information, suggest that any further information would

⁸ 128 S.W.3d 211 (Tex. 2003).

⁹ *Id.* at 222.

¹⁰ 162 S.W.3d 632 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

¹¹ *Id.* at 634.

¹² *Id.* (emphasis omitted).

¹³ *Id.*

be needed, or even useful, to reach a decision, or otherwise imply that the coverage decision had not been made.”¹⁴

Applying *Knott* and *Pace* to the case at hand, Third Coast unambiguously denied the Claim in the letter it sent NFI on July 21, 2020. Like the insurer in *Pace*, Third Coast informed NFI that it was “unable to issue any payment” and provided a reason for that decision—that “the covered loss does not exceed the policy deductible.”¹⁵ That Third Coast offered NFI an opportunity to provide “any new or different information or documentation” does not make its decision to deny coverage ambiguous. As in *Pace*, Third Coast “did not request any further information, suggest that any further information would be needed, or even useful, to reach a decision, or otherwise imply that the coverage decision had not been made.”¹⁶

Additionally, we are not persuaded by NFI’s argument that Third Coast’s below-deductible determination cannot constitute a denial because it “acknowledges coverage, but disputes valuation.” Whether an insurer denies coverage because the policy does not cover the cause of damage, or because the policy does not cover the value of damage, the insurer still ultimately denies coverage. NFI’s own counsel even considered the July 2020 letter a “denial” in its pre-suit notice letter to Third Coast.

Even if the July 2020 letter was ambiguous, NFI’s claims would have accrued on July 28, 2021, when Third Coast informed NFI that it was closing the Claim file. In *Knott*, the Supreme Court of Texas cited a court of appeals’

¹⁴ *Id.*

¹⁵ See *Pace*, 162 S.W.3d. at 634 (concluding that the insurer’s letter stating that the damage to the property was not “afforded coverage” and that it was “unable to make payment” . . . unequivocally communicated a decision to deny coverage”).

¹⁶ *Pace*, 162 S.W.3d at 634 (emphasis omitted).

decision with approval, which had “affirmed the trial court’s summary judgment on the statute of limitations issue” because “[t]he closing of the claim file was an objectively verifiable event that unambiguously demonstrated [the insurer’s] intent not to pay the claim. . . .”¹⁷

III

Although Third Coast unequivocally denied the Claim, we must also ask “whether there is ‘evidence that [the denial] decision was ever expressly or impliedly withdrawn or changed, such as by making payment or otherwise taking action inconsistent with that decision.’”¹⁸ NFI argues that Third Coast’s conduct between the July 2020 letter and the filing of this lawsuit creates genuine disputes of fact about whether NFI’s denial was final. It points to Third Coast’s inspections of the property both after the July 2020 letter and after it closed the Claim file, its revised estimate prior to closing the Claim file, and the ongoing communications between the parties after it closed the Claim file. Because we conclude that the closing of the Claim file constitutes an unequivocal denial, we need only consider Third Coast’s

¹⁷ *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 222 (Tex. 2003) (citing *Kuzniar v. State Farm Lloyds*, 52 S.W.3d 759, 760 (Tex. App.—San Antonio 2001, pet. denied)); see *De Jongh v. State Farm Lloyds*, 664 F. App’x 405, 409 (5th Cir. 2016) (unpublished) (“Under Texas law, De Jongh’s cause of action accrued on July 12, 2012, when State Farm closed the claim file.”); *Feurtado v. State Farm Lloyds*, No. 13-14-00488-CV, 2016 WL 747777, at *3 (Tex. App.—Corpus Christi-Edinburg Feb. 25, 2016, no pet.) (mem. op.) (unpublished) (“[A]t the very latest, Feurtado’s cause of action accrued as a matter of law on February 16, 2011, when State Farm formally closed its file.”).

¹⁸ *Smith v. Travelers Cas. Ins. Co. of Am.*, 932 F.3d 302, 314 (5th Cir. 2019).

conduct after this event. We therefore do not consider NFI's argument about the revised estimate.

A

Third Coast's reinspection of the property did not indicate that it withdrew or changed its denial decision. In *Smith v. Travelers Casualty Insurance Company of America*,¹⁹ we held that, under *Pace*, "an insurer's post-denial re-investigation of property damage alone is not 'taking action inconsistent with [the denial] decision.'"²⁰ NFI argues *Smith* is distinguishable because "Third Coast did not merely 're-investigate'" the claim but conducted inspections as part of its reinvestigation. But in *Smith* we held that the insured's claims accrued when the insurer sent the insured an unambiguous denial letter, despite the fact that the insurer's reinvestigation included an additional inspection of the property damage.²¹ Accordingly, here too, the additional inspection of the property damage after Third Coast's denial of the Claim did not re-start the clock.²²

In *Pace* the court recognized that "an insurer faced with a request for reconsideration of a denial of coverage would be put to the choice between refusing it outright, thereby risking a bad faith claim, or considering the

¹⁹ 932 F.3d 302 (5th Cir. 2019).

²⁰ *Id.* at 314 (alteration in original) (quoting *Pace v. Travelers Lloyds of Tex. Ins. Co.*, 162 S.W.3d 632, 635 (Tex. App.—Houston [14th Dist.] 2005, no pet.)).

²¹ *Smith*, 932 F.3d at 307, 314-16 (acknowledging that the insurer "emailed [the insured] a copy of its third engineer's report, which supported [the insurer's] original position").

²² *Id.*

request and restarting the limitations period.”²³ In this light, Third Coast’s reinspection of the property damage demonstrated a good faith effort to evaluate NFI’s claim, and Third Coast expressly characterized its willingness to do so as such: “[I]n a good faith effort to facilitate the resolution of any and all purported dispute(s) . . . without resort to litigation, we invite you to contact us to discuss a mutually acceptable protocol for addressing and resolving the disputed issues . . . including a (re)inspection”

B

The parties’ communications after Third Coast closed the Claim file were not inconsistent with Third Coast’s denial of the Claim. None of those communications reasonably suggest that Third Coast changed its position or withdrew its denial decision. After Third Coast informed NFI that it was closing the Claim file, the next communication between the parties did not occur until NFI sent Third Coast a pre-suit notice letter in February of 2022. In response to that letter, Third Coast re-opened the Claim, but only to address the Claim legally.²⁴ Third Coast promptly transferred the Claim to the “claims legal department,” which retained outside counsel. From that point on, almost all, if not all, of the correspondence between NFI and Third Coast was between the parties’ respective counsel. Third Coast’s counsel responded to the pre-suit letter, and all communications thereafter concerned only scheduling and performing reinspection of the property,

²³ *Pace*, 162 S.W.3d at 634-35 (footnote omitted) (“We can find no authority or rationale to support such an approach (but only a potential for increasing litigation needlessly).”).

²⁴ *Cf. De Jongh v. State Farm Lloyds*, 664 F. App’x 405, 409 (5th Cir. 2016) (unpublished) (“The accrual date remains unchanged, even though State Farm reopened the claim upon De Jongh’s request. Requesting that an insurance company reinvestigate a closed file does not in and of itself reset the limitations clock.”).

which we have already held is not inconsistent with an insurer's denial decision.²⁵

NFI specifically highlights Third Coast's counsel's response to the pre-suit notice letter, which stated that Third Coast would make an effort to resolve any and all "dispute(s) . . . without resort to litigation." It argues this strung NFI along, making it believe litigation was unnecessary. In *Smith*, we recognized that "Texas caselaw does not condone the practice of 'string[ing] an insured along without denying or paying a claim.'"²⁶ But there, as here, "[t]hat issue is not presented."²⁷ The insurer in *Smith* responded to a letter from the insured that is similar to the letter at issue here. The insurer's letter stated:

While your letter does not contain any additional or different information which would cause Travelers to change its position in this matter, if you will provide me some dates that the property is available for inspection, we will hire a third engineer to conduct an investigation as to the cause of claimed damage at the property *in an attempt to resolve this matter amicable* [sic]. However, please be advised that Travelers continues to reserve all its rights, specifically including, but not limited to its contractual right of appraisal in the event that the parties are unable to reach agreement regarding the "amount of loss" should the claimed damage be found to be a result from a covered cause of loss.²⁸

²⁵ *Smith v. Travelers Cas. Ins. Co. of Am.*, 932 F.3d 302, 316 (5th Cir. 2019) ("The caselaw establishes that re-investigation alone is not an action that is 'inconsistent' with the denial decision . . .").

²⁶ *Smith*, 932 F.3d at 316 (alteration in original) (quoting *Murray v. San Jacinto Agency, Inc.*, 800 S.W.2d 826, 828 n.2 (Tex. 1990)).

²⁷ *Id.*

²⁸ *Id.* at 306-07 (alteration in original) (emphasis added).

We concluded:

Travelers never signaled any retreat from its denial decision. To the contrary, Travelers explicitly warned that Smith’s retained engineer had not presented “any additional or different information which would cause Travelers to change its position in this matter.” By Travelers’s express characterization, the reinvestigation was designed as an “attempt to resolve this matter amicabl[y]”—not an acknowledgment of any doubt or defect concerning the prior determination.²⁹

The same can be said of the letter at issue in this case. Third Coast’s counsel explicitly stated Third Coast was not retreating from its denial decision: “[Third Coast] stands by its measure of [NFI’s] claimed loss”; “[Third Coast] is confident in its claim determination.” Stating that Third Coast would make an effort to resolve any and all “dispute(s) . . . without resort to litigation” by reinvestigating the Claim is similar to the insurer in *Smith* stating it would attempt to resolve the matter amicably by reinvestigating the insured’s claim. On this record, we cannot say Third Coast strung NFI along when Third Coast reiterated confidence in its initial denial decision, never indicated it was revoking its decision to deny coverage, never made payment to NFI, and warned that “neither the writing of this letter, nor any actions taken by [Third Coast] or any of its authorized representatives . . . shall constitute or be deemed a waiver of, or an estoppel to assert, any of the rights and defenses [Third Coast] may have . . . under the Policy or applicable law.”³⁰ As in *Smith*, “an unequivocal denial was

²⁹ *Id.* at 315.

³⁰ *Cf. Smith*, 932 F.3d at 306-07 (insurer stating it would conduct an investigation of the property “in an attempt to resolve this matter amicabl[y]” and warning that the insured “continues to reserve all its [legal] rights”).

followed only by a re-investigation along with a warning that the denial decision remained in place.”³¹

C

NFI points to the same evidence to argue Third Coast waived its rights and that it is entitled to equitable estoppel. “[W]aiver is an intentional relinquishment of a known right or intentional conduct inconsistent with claiming that right.”³² “Under the doctrine of equitable estoppel, a defendant is estopped from asserting a limitations defense when its conduct induced or tricked a plaintiff into allowing a filing deadline to pass.”³³ For the same reasons that we hold Third Coast’s actions after it closed the Claim file are not inconsistent with its denial of the Claim, we hold that Third Coast did not waive its rights and NFI is not entitled to equitable estoppel.

NFI’s claims accrued, at the latest, on July 28, 2021. Because there was no indication that Third Coast had changed its position or withdrew its denial, and NFI did not file this lawsuit until July 24, 2024, the district court correctly concluded that the suit was untimely under the applicable contractual and statutory limitation periods.

IV

NFI challenges the district court’s denial of its motion to compel under Federal Rule of Civil Procedure 56(d), which it filed simultaneously with its response to Third Coast’s motion for summary judgment. It asked the court to compel Third Coast to produce evidence that Third Coast

³¹ *Smith*, 932 F.3d at 316.

³² *Cont’l Ins. Co. v. Dawson*, 642 F. App’x 309, 312 (5th Cir. 2016) (unpublished) (quoting *Sun Expl. & Prod. Co. v. Benton*, 728 S.W.2d 35, 37 (Tex. 1987)).

³³ *McAllister v. FDIC*, 87 F.3d 762, 767 (5th Cir. 1996).

redacted or withheld from February 7, 2022—the date on which NFI sent Third Coast its first pre-suit demand letter—and onward. Essentially, NFI sought what Third Coast privately believed about the Claim: Third Coast’s Claim notes, Third Coast’s internal and external Claim communications, and Third Coast’s Claim-adjustment logs. The district court denied the motion as moot because it granted Third Coast’s motion for summary judgment.

NFI argues this evidence was tantamount to its response to Third Coast’s motion for summary judgment because it would have shown “whether Third Coast itself treated the claim as open, continued adjusting the loss internally, or revisited its earlier estimate in a manner inconsistent with a final denial.” Third Coast responds that the evidence before the district court “was more than adequate to determine when NFI’s causes of action accrued” and that accrual depends on “what was communicated to the insured, not what an adjuster or claims professional may have privately believed.”

“We review a district court’s denial of a Rule 56(d) motion for abuse of discretion.”³⁴ A party seeking to compel production under Rule 56(d) must “set forth a plausible basis for believing that specified facts, susceptible of collection within a reasonable time frame, probably exist and indicate how the emergent facts, if adduced, will influence the outcome of the pending summary judgment motion.”³⁵

NFI makes no argument whether the information it sought—what Third Coast privately believed about the Claim while it was reinvestigating the Claim—is susceptible of collection. In the district court, Third Coast

³⁴ *Am. Fam. Life Assurance Co. of Columbus v. Biles*, 714 F.3d 887, 894 (5th Cir. 2013) (citing *Raby v. Livingston*, 600 F.3d 552, 561 (5th Cir. 2010)).

³⁵ *Id.* (quoting *Raby*, 600 F.3d at 561).

provided a privilege log demonstrating what it withheld, which included only information after NFI's February 7, 2022, pre-suit notice. It asserted that this information was not discoverable under the attorney-client and work-product privileges, and NFI does not argue on appeal that the information sought is non-privileged.

* * *

For the foregoing reasons, we AFFIRM the district court's judgment.