

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

RANDELL G. POOL,

Plaintiff,

v.

STATE FARM LLOYDS

Defendant.

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CIVIL CASE NO. 6:24-CV-00154

**PLAINTIFF, RANDELL G. POOL’S RESPONSE TO DEFENDANT, STATE FARM
LLOYDS’, MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Plaintiff Randell G. Pool (“Pool”) and files this Response to Defendant State Farm Lloyds’ (“State Farm”) Motion for Summary Judgment (“Motion”), and would respectfully show the Court as to why same should be denied as set forth below:

I.

BASIS OF STATE FARM’S MOTION FOR SUMMARY JUDGMENT

State Farm is incorrect in its assertion that Pool’s lawsuit was filed after the applicable statute of limitations had run. Pool timely filed suit on February 12, 2024, based on State Farm’s December 12, 2024 failure and December 12, 2022 refusal to pay the Umpire’s Appraisal Award that is provided for under State Farm’s policy.

State Farm contends that it is entitled to summary judgment on all of Pool’s claims on the grounds that limitations of either two years or two years and one day on all of Pools claims accrued on March 16, 2021, and expired on March 17, 2023, before suit was filed on February 13, 2024.

In reality, Pool’s claims against State Farm arise out of its failure to pay the amount of Pool’s loss / damages associated with the underlying claim, as determined by and through appraisal

and the issuance of an Umpire's Appraisal Award on November 9, 2022 that was presented to State Farm for payment shortly thereafter and upon which State Farm denied the claim based on that Appraisal Award on December 12, 2022. Limitations could not have expired in March 2023 on a claim based on the Umpire's Appraisal Award as that Award was not even issued until November 23, 2022, and was not specifically denied by State Farm until December 12, 2022. Two years from December 12, 2022, would be December 12, 2024. Pool filed lawsuit based on State Farm's failure to timely / properly pay him for the damages / loss as determined by the Umpire's Appraisal Award in February 2024, making Pool's action against State Farm, timely and not barred by limitations.

II.

SUMMARY JUDGMENT EVIDENCE

In order to not further burden the Court's record with duplicative Summary Judgment evidence, Pool will rely on some of the same documents and evidence utilized by State Farm as support for its motion and will refer to and incorporate same by reference herein.

III.

FACTS AND TIMELINE

Pool's property located at 2209 Wooded Acres, Waco, Texas 76710 was insured under Policy No. 85-EN-G587-7, issued by State Farm at the time that a storm damage claim was reported to State Farm by Pool in March, 2021 that was subsequently denied by State Farm on March 16, 2021. See, SF Exhibit C, APP0090. State Farm's March 16, 2021 denial stated it was based on an inspection that occurred on March 15, 2021 that supposedly found "no evidence of covered damage to the roof or exterior elevations of Pool's home.

Pursuant to the Policy's appraisal provisions, on or about April 4, 2022, Pool demanded appraisal of his loss / damages from the subject storm and named Fred Lupfer as his appraiser. See, SF Exhibit D, APP0092. State Farm, in accordance with its own policy, responded on April 18, 2022, naming Bryan Scanlan as its appraiser for the Appraisal of Pool's loss / damages associated with this claim. See, SF Exhibit E, APP0093.

On or about November 9, 2022, the Umpire, Eddie Kizer, issued an Appraisal Award that determined the value of the damages / loss at Pool's home associated with the claim and/or date of loss of June 15, 2020 in the sum of \$30,546.40 on a Replacement Cost Value ("RCV") basis and \$23,534.22 on an Actual Cash Value ("ACV") basis, accounting for depreciation in the sum of \$7,012.18. See, SF Exhibit F, APP 0097. That Umpire's Appraisal Award was presented to State Farm for consideration and payment.

Approximately a month later on December 12, 2022, State Farm sent a letter to Pool denying payment of his damages / loss associated with the underlying claim, as determined by and through the signed, itemized Appraisal Award by stating that the award included *items " . . . which are not covered under your policy."* (emphasis added) See SF Exhibit G, APP0104. That letter stated State Farm's determination and belief, for the first time, that the specific items reflected in the itemized Umpire's Appraisal Award, which was new information from a month earlier, were not covered by the Policy.

Suit was filed by Pool some fifteen months later, based on State Farm's failure to pay and honor the Umpire's Appraisal Award, which determined the amount of Pool's loss / damage from the storm in question related to the underlying claim, in accordance with the Policy's appraisal provision. Prior to filing suit and after the issuance of the Appraisal Award, demand was made on State Farm by Pool's prior counsel, to pay damages and statutory interest based on the

determination of Pool's loss by and through the Umpire's Appraisal Award, issued in November, 2022.

IV.

ARGUMENT AND AUTHORITIES

State Farm incorrectly contends that Pool's lawsuit, filed approximately fifteen months after State Farm denied Pool's claim, based on the Umpire's Appraisal Award, is barred by either the applicable two year statute of limitations under the Texas Insurance Code, the Deceptive Trade Practices act and/or the contractual limitations period set forth in the Policy of two years and one day.

State Farm's reliance upon its initial claim denial from March 16, 2021 as the date it contends that the claims asserted in this case accrued is misplaced. This is due to the fact that it is State Farm's December 12, 2022 new denial of the damages found and determined by the November 9, 2022 Umpire's Appraisal Award that serves as the basis for Pool's claims asserted in this lawsuit. Pool's claims / causes of action asserted, based on the denial of the claim / damages as determined by the Umpire's Appraisal Award, could not have accrued in March, 2021 as State Farm contends, since that Award was not even issued until November, 2022.

One only needs to review and compare State Farm's two denial letters to see that the basis for State Farm's December 12, 2022 coverage denial letter is based on its review of the November, 2022 Appraisal Award which was and is new information presented to State Farm. That letter states in relevant part:

"On November 22, 2022, we received the signed, itemized appraisal award for the above referenced claim. The award set the amount of loss at \$30,546.40.

...The appraisal award includes a complete replacement of the house roof and combing of AC fins (Lines 1-17 of the award estimate) in the amount of \$30,546.40. After

careful review of the award and investigation, the award included items which are not covered under your policy.”

Obviously, the March 16, 2021 denial letter from State Farm to Pool says nothing about denying Pool’s claim because of anything in any Appraisal Award, no doubt due to the fact that appraisal had not happened and as such, denial of Pool’s claim based on that Award was not possible. It is the December 12, 2022 denial, disregard and failure to pay the Umpire’s Appraisal Award, per the terms of the Policy, that is the basis of Pool’s suit originally filed in State Court. See Plaintiff’s Original Petition at paragraphs 16 – 42. Plaintiff’s claims asserted in this lawsuit accrued on December 12, 2022, the date on which State Farm advised Pool that it was denying his claim based on the Appraisal Award that was issued in November, 2022.

State Farm initially argues that Pool’s claims under Section 541.162 of the Texas Ins. Code is time barred by the applicable two year statute of limitations, relying on its initial denial letter dated March 16, 2021, which would be true if in fact, such claims were not actually based on State Farm’s December, 2022 wrongful denial and refusal to pay the amount of Pool’s claim / losses as determined by the November, 2022 Appraisal Award.

The same is true for State Farm’s arguments that limitations bars Pool’s claims under Texas Ins. Code, Chapter 541, DTPA, breach of duty of good faith and fair dealing, which are also pled and based on State Farm’s December 12, 2022 denial of the amounts found and determined to be attributable to the date of loss involved in this claim as determined by and through the Umpire’s Appraisal Award dated November 9, 2022.

Lastly, the same is also true for why State Farm is incorrect in its assertion that Pool’s claims for breach of contract, violations of Texas Ins. Code, Chapter 542 and declaratory judgment are barred by limitations since all such claims are based on State Farm’s December 12, 2022 denial

and refusal to pay Pool the amount of his loss / damages as determined by the November, 2022 Umpire's Appraisal Award.

As support for its position that "Appraisal does not extend limitations", State Farm appears to heavily rely upon *Abedinia v. Lighthouse Prop. Ins. Co.*, No 12-20-00183-CV, 2021 SL 4898456 (Tex. App-Tyler Oct. 20, 2021, Pet Denied), presumably since that case involved appraisal. However, one critical distinction exists between that case and this case brought by Pool. In *Abedinia*, the insurer announced that it withdrew from the appraisal process "because limitations had passed." Not surprisingly, the *Abedinia* court rejected the plaintiff's argument that appraisal alone extended limitations, especially when Lighthouse withdrew from and did not participate in appraisal "because limitations had passed."

That circumstance does not exist in this case and in fact, the evidence conclusively demonstrates that not only did State Farm not withdraw from appraisal of Pool's damages / loss associated with the underlying claim, but in fact did participate in appraisal and it was only after an Appraisal Award was issued in November, 2022, did State Farm subsequently deny Pool's claim, based on the Appraisal Award. That took place some fifteen months prior to Pool filing suit against State Farm, which was based on its denial of coverage and failure to pay the November, 2022 Umpire's Appraisal Award.

The issuance of the Umpire's Appraisal Award in November, 2022 was obviously "new information" that did not exist on March 16, 2021, when State Farm contends that it denied Pool's claim. That is something that State Farm clearly recognized when it sent Pool a new letter on December, 2022 denying Pool's claim based on review of the Appraisal Award. State Farm might have a better argument that the issuance of the November, 2022 Umpire's Appraisal Award was

“not new information” had they not issued a new claim denial letter based on the Appraisal Award on December 12, 2022.

However, that is exactly what happened and that December 12, 2022 claim denial letter based on the Umpire’s Appraisal Award had the effect of re-setting the clock from a limitations standpoint to require Pool to file suit based on State Farm’s failure to timely / properly pay the Appraisal Award within two years of that December 12, 2022 denial of the November, 2022 Appraisal Award.

In cases in which additional claims are made for which new denials are issued, each denial restarts the limitations period. *Pena v. State Farm Lloyds*, 980 S.W.2d 949,954 (Tex. App. – Corpus Christi 1998, no. pet.). As the Court in *Pena* stated, “we only consider the last denial when determining the accrual date. *Id.* See also, *Pace v. Travelers Lloyds of Tex. Ins.*, 162 S.W.3d 632, 634-35 (Tex. App. – Houston [14th Dist.], no pet.). In this case, the last denial from State Farm was dated December 12, 2022 and was based on new information and a claim based on the Umpire’s Appraisal Award dated November 9, 2022. That is the denial of claim asserted by Pool as the basis for his claims asserted in this lawsuit and such was timely filed since it was filed within two years of that last denial.

Under Fed. R. Civ P. 56, the party moving for summary judgment bears the burden to show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. When reviewing a summary judgment, "we take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor." See *Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003) (citing *Southwestern Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002)).

Courts have held that, in the absence of a clear denial date, the date upon which the insurer closed the file may be relied upon as “objectively verifiable event that unambiguously demonstrates the [insurers’] intent to not pay the claim, “ thus starting the limitation clock. *Kuziniar v. State Farm Lloyds*, 52 S.W. 3d 759, 760 (Tex. App.- San Antonio 2001, pet denied); see *Jackson v. Gainsco, Ins./Gainsco Auto Ins.*, No. 05-16-01190-CV, 2018 WL 2979960, at *3 (Tex. App.- Dallas 2018, pet denied) (mem. op.); *Sheppard v. Travelers Lloyds of Tex. Ins.*, No. 14-08-00248-CV, 2009 WL 3294997, *4 (tex. App.-Houston [14th Dist.] 2009, pet denied) (mem. op.).

In the case at hand, State Farm reopened Pool’s claim after their initial denial letter in March of 2021, which is evident by the claims record and the “**reclosing {of} claim**”. SF Exhibit B, APP 0064.

Although as a general rule, determining the accrual date of a cause of action is a question of law, the Texas Supreme Court acknowledges that the accrual date of a cause of action based on a violation of the Texas Insurance Code, the bad-faith breach of an insurance contract, or a violation of the DTPA involving insurance coverage, may present questions of fact to be determined on a case-by-case basis. *Providence Life and Accident Ins. Co. v. James Knott, M.D.*, 128 S.W.3d 211 (2003).

In the case at hand, State Farm re-opened Pool’s claim when they entered into Appraisal under their Policy with Pool, causing each party to incur cost with an Umpire. See Exhibit B, APP0067. State Farm opened their file, continued investigating the claim, incurred cost, *reset their calendars* and subsequently, on December 12, 2022 denied Pool’s claim that was based on the new Appraisal Award and closed its file. See Exhibit B, APP0064-APP0067. The verifiable event of State Farm re-opening and then subsequently closing their claim file demonstrates State

Farm's intent to not pay the new claim based on the Appraisal Award as of December 12, 2022, which then meant that limitations on such claim does not expire until December 12 or 13, 2024, long after this suit was filed in February, 2024. Given that Pool timely filed suit within two years / two years and a day after his claims / causes of action based State Farm's denial of payment of the Appraisal Award accrued on December 12, 2022, State Farm's Motion for Summary Judgment premised on limitations having supposedly run, should be denied in all respects, either as a matter of law or as a result of the existence of a genuine issue of material fact.

WHEREFORE PREMISES CONSIDERED, Randell G. Pool, requests the Court DENY the Defendant's Motion for Summary Judgment as set forth herein and for such other and further relief, at law or in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

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**ATTORNEY FOR PLAINTIFF, RANDELL G.
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CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Civil Procedure 5(b)(3), I hereby certify a true and correct copy of the foregoing document was electronically filed and e-served on this 15th day of April, 2025. Parties may access this filing through the Court's system.

/s/ Christopher G. Lyster
Christopher G. Lyster