

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12392
Non-Argument Calendar

GENE CHAMBERS,

Chapter 7 Trustee for the Bankruptcy Estate of Angela Borrero,
Plaintiff-Appellant,

versus

PROGRESSIVE SELECT INSURANCE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:24-cv-00141-JSS-DCI

Before JILL PRYOR, BRANCH, and LUCK, Circuit Judges.

PER CURIAM:

After Angela Borrerro hit and severely injured a motorcyclist, a jury found her liable for \$7.4 million in damages, forcing her

to declare bankruptcy. The bankruptcy estate's trustee, Gene Chambers, sued Borrero's insurer, Progressive Select Insurance Company, alleging it hadn't worked in good faith to settle the claims arising from the accident. Progressive moved for judgment on the pleadings, and the district court granted the motion. Chambers appeals the judgment. After careful consideration, we affirm.

FACTUAL BACKGROUND

On October 1, 2018, Borrero was driving on County Road 435 in Orange County, Florida, when she collided with James Spalding, seriously injuring him and totaling his Harley Davidson motorcycle. Borrero was insured by Progressive up to a bodily-injury limit of \$10,000 per person and \$20,000 per occurrence and a property-damage limit of \$10,000. That same day, she reported the crash to Progressive, which assigned claim adjusters to the property-damage and bodily-injury claims.

After evaluating the bodily-injury claim, Progressive sent a letter to Spalding's attorney on October 10 offering to settle it for the \$10,000 bodily-injury policy limit. Later, Progressive learned that a new attorney was representing Spalding, so on October 22 it sent the \$10,000 settlement offer for the bodily-injury claim to the new attorney, too. Spalding didn't accept Progressive's bodily-injury settlement.

On October 23, Spalding sent Progressive a demand letter offering to settle the property-damage claim within ten days for \$9,627.52. That was the combined value, he explained, of his motorcycle—including after-market parts—and helmet. Progressive

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responded that it “[would] be in touch” once it had inspected the motorcycle and received the payoff information from the lienholder.

On November 7, after inspecting the motorcycle, Progressive offered Spalding \$8,124.83 for the property-damage claim. Five days later, Spalding sued Borrero in Florida state court for his bodily injury and property damage.

On November 28, Progressive offered Spalding \$8,372.33 to settle the property-damage claim. When Spalding didn’t accept that offer, Progressive offered \$9,674.36—Spalding’s original demand plus statutory interest—on January 3, seventy-two days after Spalding’s original property-damage demand letter. Spalding rejected this offer, too. But he later settled his property-damage claim with Borrero for that same amount.

Spalding’s bodily-injury claim proceeded to trial. The jury returned a \$7,491,364.63 verdict for Spalding, and the trial court entered judgment for that amount against Borrero on April 27, 2023. Borrero filed for bankruptcy, and Chambers was appointed as the bankruptcy estate’s trustee.

PROCEDURAL HISTORY

Chambers sued Progressive in Florida state court on behalf of Borrero’s bankruptcy estate, alleging that Progressive had “acted in bad faith” in attempting to settle Spalding’s property-damage claim against Borrero. As damages, Chambers sought the full amount of the excess judgment, plus interest and attorney’s fees.

Progressive removed the lawsuit to federal court, alleging that diversity existed between Progressive—an Ohio citizen—and Borrero—a Florida citizen. The notice of removal said nothing about Chambers’s citizenship. Chambers filed an amended complaint. It alleged that Progressive was a citizen of Ohio but didn’t allege Chamber’s or Borrero’s citizenship.

Progressive moved for judgment on the pleadings. A recent amendment to Florida law, it argued, gave insurers a safe harbor by providing that no bad-faith action was available against an insurer who “tender[ed] the lesser of the policy limits or the amount demanded by the claimant within [ninety] days” of receiving evidentiary support for a claim. This safe-harbor rule applied, Progressive explained, because, within ninety days of receiving Spalding’s demand, it had tendered (1) the bodily-injury policy limit and (2) the amount Spalding had demanded for his property damages. In response, Chambers argued that the new safe-harbor rule didn’t entitle Progressive to judgment in its favor because it didn’t apply “retroactively” to her bad-faith lawsuit, which was based on Progressive’s conduct in 2018.

The district court granted the motion and entered judgment for Progressive based on the safe-harbor rule. It rejected Chambers’s argument that applying the rule to this case would be retroactive. A claim, the district court explained, is governed by the law as it existed when the claim accrued. And Chambers’s bad-faith claim accrued when the trial court entered the excess judgment against Borrero in April 2023. At that time, Florida law provided a

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ninety-day safe harbor for insurers. Thus, the district court reasoned, the safe-harbor rule applied prospectively to Chambers’s claim, not retroactively.

STANDARD OF REVIEW

We review de novo a district court’s judgment on the pleadings. *Thompson v. Regions Sec. Servs., Inc.*, 67 F.4th 1301, 1305 (11th Cir. 2023).

DISCUSSION

We begin with our jurisdiction before turning to the merits. *See NE 32nd St., LLC v. United States*, 896 F.3d 1240, 1245 (11th Cir. 2018) (“[B]ecause a federal court is powerless to act beyond its statutory grant of subject matter jurisdiction, it should raise the question of subject matter jurisdiction at any point in the litigation where a doubt about jurisdiction arises.” (citation modified)).

Jurisdiction

In a diversity case like this one, we have jurisdiction only if the dispute is between “citizens of different [s]tates.” 28 U.S.C. § 1332(a). If a plaintiff invoking diversity jurisdiction doesn’t allege “the citizenship of each party,” we’re “constitutionally obligated to dismiss the action altogether if the plaintiff does not cure the deficiency.” *Travaglio v. Am. Exp. Co.*, 735 F.3d 1266, 1268 (11th Cir. 2013).

Here, Chambers’s amended complaint alleged that Progressive was an Ohio citizen but didn’t plead Chambers’s or Borrero’s

citizenship. It attached the underlying state-court complaint and answer, which alleged that Borrero was a Florida resident. And Progressive’s notice of removal pleaded its own Ohio citizenship and the Florida citizenship of Borrero, the bankruptcy debtor. We issued a jurisdictional question for the parties to address “whether the relevant pleadings sufficiently allege[d] the plaintiff’s citizenship so as to invoke the district court’s diversity jurisdiction.”

In her response to the jurisdictional question, “Chambers represent[ed] that she . . . was a citizen of Florida at the time this lawsuit was filed.” Of course “a sentence in an unsworn brief is not evidence.” *Travaglio*, 735 F.3d at 1269. But “[d]effective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.” 28 U.S.C. § 1653. Thus, “where subject matter jurisdiction exists and any procedural shortcomings may be cured by resort to [section] 1653,” there is “no valid reason for the court to decline the exercise of jurisdiction.” *Corp. Mgmt. Advisors, Inc. v. Artjen Complexus, Inc.*, 561 F.3d 1294, 1297 (11th Cir. 2009) (citation modified).

Because it’s clear that the district court had subject-matter jurisdiction, to cure the procedural shortcomings in the amended complaint, we’ll deem the complaint’s jurisdictional allegations amended to plead the Florida citizenship of both Borrero and Chambers. We direct Chambers to file in the district court (1) a notice of this opinion and (2) a copy of the complaint containing the amended jurisdictional allegations. *See* 28 U.S.C. § 1653.

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The Judgment on the Pleadings

With jurisdiction settled, we turn to the merits. Chambers contends that the district court erred by entering judgment on the pleadings for Progressive because the 2023 safe-harbor rule did not apply “retroactively” to her bad-faith claim, which was based on Progressive’s conduct in 2018. But the district court didn’t err by applying the safe-harbor rule.

Under Florida’s third-party bad-faith cause of action, “an insured or a third-party claimant” may sue “when an insurer has breached its duty of good faith and that breach results in an excess judgment being entered against its insured.” *Perera v. U.S. Fid. & Guar. Co.*, 35 So. 3d 893, 899 (Fla. 2010). If the action succeeds, the insured or the third-party may “recover the amount of [the] excess judgment.” *Macola v. Gov’t Emps. Ins. Co.*, 953 So. 2d 451, 455 (Fla. 2006).

“The question of whether an insurer has acted in bad faith in handling claims against the insured is determined under the totality of the circumstances standard.” *Harvey v. GEICO Gen. Ins. Co.*, 259 So. 3d 1, 7 (Fla. 2018) (citation modified). The “critical inquiry” is “whether the insurer diligently . . . worked on the insured’s behalf to avoid an excess judgment” “with the same haste and precision as if it were in the insured’s shoes.” *Id.*

In March 2023, however, Florida’s legislature amended the law to provide a safe harbor for insurers that promptly offer to settle a claim against their insureds for an amount equal to the policy limit or the amount demanded by the insured:

An action for bad faith involving a liability insurance claim, including any such action brought under the common law, shall not lie if the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within [ninety] days after receiving actual notice of a claim which is accompanied by sufficient evidence to support the amount of the claim.

Ch. 23-15, § 4, at 7, Laws of Fla. (codified at Fla. Stat. § 624.155(4)(a) (2023)).

“In the absence of express statutory language to the contrary, Florida law generally holds that the applicable version of a statute is the version in effect at the time a cause of action accrues.” *R.J. Reynolds Tobacco Co. v. Sheffield*, 266 So. 3d 1230, 1233 (Fla. Dist. Ct. App. 2019), *approved*, 329 So. 3d 114 (Fla. 2021). So, for example, when analyzing a claim for breach of an insurance contract, the Florida Supreme Court has looked to “the applicable statutory provision for the period of time during which [the plaintiff] incurred his loss,” despite a later amendment. *Trinidad v. Fla. Peninsula Ins. Co.*, 121 So. 3d 433, 439 (Fla. 2013). Likewise, in applying Florida’s setoff statute in a medical-malpractice case, the Florida Supreme Court didn’t apply the current version of the statute, but “the [] version . . . which was in effect when the cause of action arose.” *D’Angelo v. Fitzmaurice*, 863 So. 2d 311, 314 n.9 (Fla. 2003). And in a wrongful-death suit by the parents of a car accident victim, Florida’s Fourth District Court of Appeal rejected the defendant’s argument that “the statute in effect at the time of the accident govern[ed].” *Nationwide Mut. Fire Ins. Co. v. MacDonald*, 645 So. 2d

1057, 1058 (Fla. Dist. Ct. App. 1994). Instead, the court applied the law in place when the cause of action accrued—“on the date of [the] decedent’s death.” *Id.*

Florida courts have applied this date-of-accrual rule to statutes governing punitive damages, *St. John v. Coisman*, 799 So. 2d 1110, 1113 (Fla. Dist. Ct. App. 2001) (explaining “[t]he applicable Florida statute” was the one “in effect when this cause of action arose”); offers of judgment, *Brodose v. Sch. Bd. of Pinellas Cnty.*, 622 So. 2d 513, 514 (Fla. Dist. Ct. App. 1993) (declining to apply amendment that had not yet been passed “at the time [the] cause of action accrued”); liability for ridesharing drivers, *Abner v. Lyft Fla., Inc.*, 422 So. 3d 1226, 1230 (Fla. Dist. Ct. App. 2025) (“Because the cause of action accrued on the date of the accident, and the statute reflected the law of Florida on that date, we conclude [it] governs this case.”); and billing for utilities, *Hollywood Park Apartments S., LLC v. City of Hollywood*, 361 So. 3d 356, 360 (Fla. Dist. Ct. App. 2023) (“[T]he last element constituting the cause of action occurred in May 2016. As such, the 2014 ordinance [controls].”).

And we’ve explained that a Florida “bad-faith claim accrues upon entry of an excess judgment against the insured.” *McNamara v. Gov’t Emps. Ins. Co.*, 30 F.4th 1055, 1063 n.7 (11th Cir. 2022) (citation modified). Florida courts have said the same. *See, e.g., Wright Ins. Agency, Inc. v. Nationwide Mut. Fire Ins. Co.*, 328 So. 3d 331, 334 (Fla. Dist. Ct. App. 2021) (explaining that a bad-faith claim is “not ripe until the third party obtains a judgment against the insured for an amount that exceeds the insured’s policy limits”); *Cunningham*

v. Standard Guar. Ins. Co., 630 So. 2d 179, 181 (Fla. 1994) (explaining that “an excess judgment is an element of a bad-faith claim”); *Davis v. Monahan*, 832 So. 2d 708 (Fla. 2002) (“[A] cause of action accrues . . . when the last element of the cause of action occurs.”).

The district court correctly applied these rules to grant judgment on the pleadings for Progressive. The general rule—that a claim is governed by the law when it accrues—applies to Chambers’s bad-faith cause of action because there’s no “express statutory language to the contrary.” See *R.J. Reynolds*, 266 So. 3d at 1233. In fact, the legislature expressly provided that the amendment should apply to “causes of action filed after [its] effective date” in March 2023. Ch. 23-15, § 30, at 20, Laws of Fla.. Chambers’s bad-faith claim accrued in April 2023, when the trial court entered the excess judgment against Borrero, and the claim was filed in December 2023. Thus, the amendment applies to Chambers’s bad-faith claim.

The amendment’s safe-harbor rule forecloses a bad-faith cause of action when “the insurer tenders the lesser of the policy limits or the amount demanded by the claimant within [ninety] days” of receiving a demand supported by evidence. Fla. Stat. § 624.155(4)(a). Here, according to Chambers’s complaint, Progressive offered Spalding the bodily-injury policy limit on October 22, 2018—twenty-one days after the accident occurred on October 1. And Progressive offered Spalding the full amount he had demanded on January 3, 2019—seventy-two days after he mailed

his October 23 property-damage demand letter. So, the safe-harbor rule barred Chambers's bad-faith claim, entitling Progressive to judgment on the pleadings.

Chambers disagrees and offers three responses. First, she argues, although the district court purported to apply the safe-harbor rule prospectively, its application to her case necessarily has "retroactive operation." She cites *Metropolitan Dade County v. Chase Federal Housing Corporation*, where the Florida Supreme Court explained that whether a provision "operate[s] retrospectively" depends on whether it "attaches new legal consequences to events completed before its enactment." 737 So. 2d 494, 499 (Fla. 1999) (citation modified). The 2023 amendment, she contends, changed the legal consequences of the 2018 settlement negotiations by immunizing Progressive from bad-faith liability for them.

But Chambers's argument takes too narrow a view of when the "events" producing a bad-faith cause of action are "completed." See *id.* Chamber's bad-faith claim didn't exist until the April 2023 excess judgment was entered—that is, when the claim accrued. See *Cunningham*, 630 So. 2d at 181; *Wright Ins. Agency*, 328 So. 3d at 334. So, the events to which the "legal consequences" "attache[d]" were not completed until after the amendment. See *Metro. Dade Cnty.*, 737 So. 2d at 499. *Metropolitan Dade County* thus confirms that the district court's application of the safe-harbor rule was prospective, not retroactive.

Second, Chambers points to language from the 2023 amendment providing that it "shall not be construed to impair any right

under an insurance contract in effect on or before the effective date” of the amendment. See Ch. 23-15, § 29, at 20, Fla. Laws (providing that “[t]o the extent that this act affects a right under an insurance contract,” it applies only to contracts “issued or renewed after” the amendment). The safe-harbor rule doesn’t apply, Chambers insists, because it impairs Borrero’s rights under her insurance contract, which was signed before the safe-harbor rule’s enactment.

But Chambers’s bad-faith cause of action is not a right under the insurance policy. It’s true, as Chambers observes, that “a good faith obligation is implied in all insurance contracts.” See *N. Am. Van Lines, Inc. v. Lexington Ins. Co.*, 678 So. 2d 1325, 1330–31 (Fla. Dist. Ct. App. 1996). But a substantive right under the contract is not the same as a right to bring a cause of action. *Bacardi v. Lindzon*, 845 So. 2d 33, 36 (Fla. 2002) (defining a cause of action as “the right which a party has to institute a judicial proceeding” (quoting *Shearn v. Orlando Funeral Home, Inc.*, 88 So. 2d 591 (Fla. 1956))). And a third-party bad-faith cause of action is a creature of common law and statutory law, not of the insurance contract. See *Macola*, 953 So. 2d at 456–57; Fla. Stat. § 624.155(1)(b). Indeed, even the injured party—who is not a signatory to the insurance contract—may bring a third-party bad-faith cause of action. See *May v. Illinois Nat’l Ins. Co.*, 771 So. 2d 1143, 1147 n.3 (Fla. 2000) (“Under Florida law, a party that has obtained a judgment against an insured in excess of the insured’s liability policy limits may bring a direct third-party bad faith action against the insurance company that issued the liability policy to the insured.”).

Because the insured’s implied contractual duty of good faith is distinct from the common-law bad-faith cause of action, it’s clear that the safe-harbor rule didn’t “impair any right under an insurance contract.” Ch. 23-15, § 29, at 20, Laws of Fla. The rule didn’t eliminate Borrero’s implied right to have Progressive exercise good faith in settling claims against her. Instead, it conditioned a different right—the right to file a bad-faith lawsuit—on certain actions by Progressive. See Fla. Stat. § 624.155(4)(a). But Borrero didn’t have that right to file, as we explained above, until she faced an excess judgment. So, neither Borrero nor Chambers had such a right on the date the legislature enacted the safe-harbor rule. Because the rule affects causes of action, not rights under insurance contracts, the district court properly applied it to this case.

Menendez v. Progressive Express Insurance Co., 35 So. 3d 873 (Fla. 2010), and *Blumberg v. Security First Insurance Co.*, 420 So. 3d 1070 (Fla. Dist. Ct. App. 2025), are not to the contrary. In *Menendez*, the insurer didn’t pay the personal-injury-protection benefits it owed its insured under the insurance policy. 35 So. 3d at 874. Then, the legislature passed an amendment requiring the insured to notify the insurer before suing to collect benefits due under the policy. *Id.* at 876 (citing Fla. Stat. § 627.736(11)(a) (2001)). When the insured sued for her benefits without first notifying the insurer, the Florida Supreme Court considered whether “the statutory pre-suit notice provision could be applied retroactively” to the insured’s suit. *Id.* at 874. The court concluded that it couldn’t. Although “the [l]egislature intended for the statutory presuit notice to

be applied retroactively,” the court reasoned, retroactive application would violate the Florida Constitution because it “substantively alter[ed] an insurer’s obligation to pay and an insured’s right to sue under the contract.” *Id.* at 877, 879.

In *Blumberg*, Florida’s Fifth District Court of Appeal applied *Menendez*’s rule to the issue of attorney’s fees. 420 So. 3d at 1073. When the parties entered into an insurance contract in 2021, Florida law provided that insureds who recovered against their insurers were entitled to attorney’s fees. *Id.* at 1072. In 2023—as part of the same amendment at issue in this case—Florida repealed the law providing for attorney’s fees. *Id.* The insured then sued her insurer for a covered loss that occurred in 2022. *Id.* The parties settled but said nothing about the right to attorney’s fees. *Id.* The insured moved for attorney’s fees, and the insurer opposed the motion, arguing that the amended version of the statute applied. *Id.* The *Blumberg* court disagreed. It reasoned that the insured’s claim was “based on a contractual right” because the entitlement to attorney’s fees “was incorporated into the policy” when it was signed “before such a right was repealed by the [l]egislature.” *Id.* at 1075–76. Thus, applying the amendment would have deprived the insured of her “substantive right to attorney’s fees” under the contract. *Id.* at 1073, 1076.

Critically, in both cases, the insureds were suing under their insurance contracts to enforce their rights under the policies. Chambers’s third-party bad-faith lawsuit, by contrast, is an extracontractual right to sue. It was not conferred by the policy and

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did not come into existence before Florida enacted the safe-harbor rule. Thus, the legislature’s amendment conditioning the right to sue for bad faith doesn’t implicate the retroactivity concerns present in *Menendez* and *Blumberg*, where the amendments eliminated vested rights under insurance contracts.

Third, Chambers asserts that applying the safe-harbor rule “retroactively” would violate the Due Process Clause and the Contracts Clause of the Florida Constitution. But, as we explained, the district court applied the safe-harbor rule prospectively, not retroactively, to a cause of action that accrued after its enactment. And the bad-faith cause of action is not a right under the insurance contract. So Chambers’s constitutional arguments are misplaced.

CONCLUSION

The safe-harbor rule applied to Chambers’s bad-faith claim because it was effective when the claim accrued in April 2023. Under the rule, Progressive could not be liable if it tendered either the policy limit or the amount a claimant demanded within ninety days of the demand. The pleadings establish that, within ninety days of Spalding’s documented property-damage demand, Progressive tendered the bodily-injury policy limit and the amount Spalding demanded for the property-damage claim. So, the district court did not err by granting judgment on the pleadings for Progressive.

AFFIRMED.