IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

MT. PLEASANT PROPERTIES, LLC **PLAINTIFF**

v. **CIVIL ACTION NO. 1:23-cv-88-TBM-RPM**

WRIGHT NATIONAL FLOOD INSURANCE COMPANY **DEFENDANT**

MEMORANDUM OPINION AND ORDER

This case arises from a dispute over flood insurance payments for building damage due to an October 2020 hurricane. Mt. Pleasant Properties, LLC held a flood insurance policy with Wright National Flood Insurance Company when the hurricane hit the coast of Mississippi. Mt. Pleasant submitted a proof of loss detailing the damage it suffered, and after numerous communications from Wright to Mt. Pleasant, Wright ultimately denied Mt. Pleasant's claim. Mt. Pleasant then filed this action alleging that Wright is liable for breach of contract and other extracontractual claims that arise from Wright's denial of Mt. Pleasant's flood insurance claim. Before the Court is Wright's Motion to Dismiss [6].

Wright asserts that if Mt. Pleasant wanted to dispute the denial of its claim, it had one-year from the denial date to file a lawsuit. Because Mt. Pleasant did not file a lawsuit until more than two years after it received the denial letter, Wright contends that Mt. Pleasant's breach of contract claim is time barred and all other claims are preempted by federal law. This Court agrees, and the Motion to Dismiss [6] is GRANTED.

I. BACKGROUND

On October 28, 2020, Mississippi experienced the landfall of Hurricane Zeta. [1]. Mt. Pleasant, a flood insurance policy holder with Wright, suffered damage to its insured property

because of the hurricane. [1], pps. 2-4. As a result, on December 23, 2020, Mt. Pleasant submitted a "proof of loss" form to Wright as support for its insurance claim. [1], p. 7. But, on January 11, 2021, Wright sent Mt. Pleasant its first letter stating that it had not received Mt. Pleasant's proof of loss for the covered building damages. [1-15]. Wright gave Mt. Pleasant ten days to respond with a valid, signed proof of loss, or else Wright would be "forced to deny [Mt. Pleasant's] claim and close [its] file." *Id.* The record is silent on whether Mt. Pleasant responded to this specific letter.

On February 15, 2021, Wright sent Mt. Pleasant another letter stating that it had, in fact, received the original proof of loss that Mt. Pleasant submitted to it on December 23, 2020. [1-17]. But that letter also stated that though the letter was not a denial of Mt. Pleasant's claim, the proof of loss could not be accepted based on the Standard Flood Insurance Policy because the "amount claimed is not an accurate reflection of [the] covered damage from this flood event and includes non-covered items." *Id.* Mt. Pleasant concedes to at least having the knowledge that the proof of loss was not accepted by Wright in its complaint. [1], p. 8. But again, the record does not support that Mt. Pleasant responded to this letter in anyway either.

Wright's third and final letter to Mt. Pleasant was dated February 23, 2021. [1-18]. The letter stated on its face that it was a "**DENIAL OF CLAIM**." *Id.* Wright supported the denial by referencing the January 11, 2021, letter where it stated that "[it] would need a sworn proof of loss for the undisputed amount [or it] would deny and close [Mt. Pleasant's] claim." *Id.* Wright explained that "[s]ince [Wright had] not received a properly executed proof of loss… we are forced to deny [Mt. Pleasant's] claim and close [its] file. Should [Mt. Pleasant] provide [Wright] with a signed proof of loss, [Wright] would reopen the file." *Id.* Also, contained within the letter were instructions on what Mt. Pleasant could do to dispute this denial. On page three of the letter,

Wright stated "[i]f you disagree with our decision, you have the option to appeal our decision directly with [The Federal Emergency Management Agency ("FEMA")]… within sixty days of the date of this letter." *Id.*, p. 3. On page four of this denial letter were the detailed Policyholder Rights, which laid out the appeal process to FEMA. *Id.*, p. 4. The letter also stated that "[f]ederal law permits Mt. Pleasant to file suit in the Federal District Court… within one year of when the insurer first denied all or part of your claim." *Id.* Apparently, Mt. Pleasant did not take any steps to utilize these remedies. Instead, on December 21, 2022, over a year after receiving the denial letter, Mt. Pleasant submitted another proof of loss form for the denied claim. [1-19]. When Wright did not respond to this new proof of loss, Mt. Pleasant filed this lawsuit on April 4, 2023—more than two years after receiving the denial of claims letter from Wright. [1-20].

II. STANDARD OF REVIEW

"The pleading standards for a Rule 12(b)(6) motion to dismiss are derived from Rule 8 of the Federal Rules of Civil Procedure, which provides, in relevant part, that a pleading stating a claim for relief must contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *In re McCoy*, 666 F.3d 924, 926 (5th Cir. 2012). To survive dismissal, "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, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)).

The Fifth Circuit has explained the *Iqbal/Twombly* standard as follows:

> For a claim to be plausible at the pleading stage, the complaint need not strike the reviewing court as probably meritorious, but it must raise "more than a sheer possibility" that the defendant has violated the law as alleged. The factual allegations must be "enough to raise a right to relief above the speculative level."

Oceanic Expl. v. Phillips Petroleum Co. ZOC, 352 F. App'x 945, 950 (5th Cir. 2009) (citing *Twombly*, 550 U.S. at 570).

When considering a motion to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief can be granted, a district court must accept the factual allegations of the complaint as true and resolve all ambiguities or doubts regarding the sufficiency of the claim in favor of the plaintiff. *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993). The Court's review is limited to the allegations in the complaint and to those documents attached to the motion to dismiss to the extent that those documents are referred to in the complaint and are central to the claims. *Causey v. Sewell Cadillac–Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004). The Court need not "accept as true conclusory allegations or unwarranted deductions of fact." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000) (quoting *Tuchman v. DSC Commc'ns Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994)).

III. ANALYSIS

Congress enacted the National Flood Insurance Act of 1968, 42 U.S.C. §§ 4001 et seq., to ensure the availability of flood insurance in areas where it is uneconomical for private insurers to offer coverage. *Gowland v. Aetna*, 143 F.3d 951, 953 (5th Cir. 1998). The National Flood Insurance Act established the National Flood Insurance Program, which allows private insurers to issue Standard Flood Insurance Policies on behalf of the federal government. *Cohen v. Allstate Ins. Co.*, 924 F.3d 776, 778 (5th Cir. 2019). These private carriers, known as Write-Your-Own carriers, act as fiscal agents of the federal government by issuing and administering policies underwritten by the government. *Id.*

FEMA administers the National Flood Insurance Program and determines the content of Standard Flood Insurance Policies. *Campo v. Allstate Ins. Co.*, 562 F.3d 751, 754 (5th Cir. 2009); 44 C.F.R. Pt. 61, App. A(1) (laying out the Standard Flood Insurance Policy terms). Write-Your-Own carriers must issue Standard Flood Insurance Policies in FEMA's precise terms as well as adjust and pay claims according to FEMA's regulations. *Campo*, 562 F.3d at 754. The Fifth Circuit established that the Standard Flood Insurance Policy "must be strictly construed and enforced." *Gowland*, 143 F.3d at 954. "The terms of the Standard Flood Insurance Policy are dictated by FEMA, and cannot be waived or modified by [any party]." *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 388 (5th Cir. 2005). These strict rules of construction cannot be relaxed, even if a harsh result follows. *Id.* at 387 (5th Cir. 2005) (discussing *Gowland*, 143 F.3d at 955); *accord Cohen*, 924 F.3d at 782 ("[N]ot even the temptations of a hard case will provide a basis for ordering recovery contrary to the terms of a regulation, for to do so would disregard the duty of all courts to observe the conditions defined by Congress for charging the public treasury.") (quoting *Forman v. Fed. Emergency Mgmt. Agency*, 138 F.3d 543, 545 (5th Cir. 1998)).

For the sake of clarity, the Court will first determine whether Mt. Pleasant's breach of contract claim is time barred. Then it will move to Mt. Pleasant's additional claims and assess whether those claims are preempted.

A. Mt. Pleasant's claim of breach of contract is time barred

Standard Flood Insurance Policy policyholders have a one-year window in which to bring claims against their Write-Your-Own carriers. The pertinent provision, 42 U.S.C. Section 4072 provides:

> [U]pon the disallowance by the Administrator of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant,

> within one year after the date of mailing of notice of disallowance or partial disallowance by the Administrator, may institute an action against the Administrator on such claim....

42 U.S.C. § 4072. Wright is a Write-Your-Own carrier authorized to issue the Standard Flood Insurance Policy pursuant to the agreement between itself and FEMA. And failure to file a lawsuit within one-year of the written denial of the claim bars recovery. *Cohen*, 924 F.3d at 781 (finding that a letter from a private flood insurer denying coverage for the insured property amounted to an effective "denial of all or part of insured claim" and acted as the trigger for the one-year limitation period).

Wright issued three letters to Mt. Pleasant. [1-15]; [1-17]; [1-18]. The first letter, dated January 11, 2021, stated that Wright had not received a signed proof of loss for the covered building damages. [1-15]. In that letter, Wright put forth a copy of the building estimate of covered repairs completed by the independent adjuster selected by Wright, and if Mt. Pleasant disagreed with the estimate, it could withdraw the claim, or provide the reasoning for why it disagreed with the settlement. *Id.*

The second letter dated February 15, 2021, seemingly corrected Wright's first letter where it stated it had not received a proof of loss form. [1-17]. That letter said that Wright acknowledged receipt of Mt. Pleasant's sworn building replacement cost proof of loss for building damage and that it was received in its office on December 23, 2020. [1-17]. But the second letter also stated that the proof of loss could not be accepted under the terms and conditions of the Standard Flood Insurance Policy because "the amount claimed is not an accurate reflection of covered damage from this flood event and includes non-covered items." *Id.* The second letter also stated that it was not a denial, and that the independent adjuster provided the estimate and proof of loss for the

undisputed covered building damages and if Mt. Pleasant had any other support for its claim, it could provide that to the adjuster for review and consideration. *Id.*

The third and final letter from Wright, dated February 23, 2021, served as the denial of the claim filed by Mt. Pleasant. [1-18]. This letter stated "**DENIAL OF CLAIM**" at the top and was clear on its face. *Id.* Wright stated, in that letter, that Mt. Pleasant was sent a "10-day letter dated January 11, 2021, indicating if [Wright] did not receive the signed, sworn proof of loss for the undisputed amount, [Wright] would deny and close [Mt. Pleasant's] claim." *Id.* The letter concludes by saying "[s]ince [Wright has] not received a properly executed proof of loss representing the damages arising from the [Hurricane Zeta] flood event, we are forced to deny your claim and close your file." *Id.* On page four of this letter, the Policyholder's Rights were explained, which included that the claimant had one-year from denial of the claim to file a lawsuit in Federal District Court. *Id.*

Mt. Pleasant states in its Complaint that the second letter dated, February 15, 2021, actually rescinded Wright's first January 11, 2021, letter. [1], p. 9. Based on this, Mt. Pleasant asserts that Wright breached the contract because all of Wright's communications with Mt. Pleasant were generally confusing and allegedly unclear regarding the December 2020 proof of loss. [8], p. 13. But the February 15th letter never stated that it was a rescission letter. [1-17]. In fact, that letter stated that even though Wright had actually received Mt. Pleasant's proof of loss, it could not be accepted because "it was not an accurate reflection of the covered damage from the flood event." *Id.*

Further, this Court cannot agree with Mt. Pleasant's assertion that the communications from Wright to Mt. Pleasant were confusing as it relates to the denial and the timeline for the

remedies.[1] Though Wright stated in its first letter that it had not received a proof of loss from Mt. Pleasant, the subsequent February 15, 2021, letter stated that the proof of loss had been received but could not be accepted. [1-17]. So, Wright informed Mt. Pleasant that it would need to submit additional support if it did not agree with the independent adjuster's estimate of the undisputed damages of the building, which Mt. Pleasant did not do. *Id.* Regardless, the third letter, dated February 23, 2021, was clearly a denial of the claim and triggered the one-year limitation period to bring this action. [1-18]; *Cohen*, 924 F.3d at 781. Admittedly, the denial came eight days after the second letter dated February 15, 2021, which is quite the turnaround for any policyholder to address the remedy options within that second letter. Still, the remedies and one-year deadline provided to Mt. Pleasant in the February 23, 2021, letter were clear. [1-18], p. 4.

Like the letter in *Cohen* , the February 23, 2021, denial letter stated that "If [Mt. Pleasant] disagree[s] with [Wright's] decision, [Mt. Pleasant] [has] the option to appeal [the] decision directly with FEMA… within sixty days of [the denial] letter to explain the issue, include a copy of this letter, and provide any supporting documentation." [1-10], p. 3. It also stated that Mt. Pleasant could file a lawsuit in a Federal District Court within one-year of the denial date. *Id.*, p. 4. Mt. Pleasant took none of the options to remedy the denial. Instead, over a year later, on December

[1] While there may have been some confusion as to the first two letters from Wright regarding the proof of loss, such confusion does not change the clarity of the third letter being a "**DENIAL OF CLAIM**." The Court does note though that during the hearing on the instant Motion, Wright stated that if Mt. Pleasant would have signed the proof of loss attached to the January 11, 2021, letter, then Mt. Pleasant's signing would have only conveyed that the proof of loss amount was the undisputed amount in damages to the property. Wright explained that signing that proof of loss for the undisputed amount in damages would not have precluded Mt. Pleasant from signing additional proofs of loss, allowing for the claim to be adjusted. But the proof of loss attached to the January 11th letter did not state that it was solely for the "undisputed amount in damages," nor did it state that the insured could file additional proofs of loss for any damage not included on that January 11th proof of loss document. The Court questioned whether signing the document, under the penalty of perjury, would prevent actual recovery for Mt. Pleasant because they would be agreeing that the then submitted proof of loss would be the full cost for the repairs or replacements. Wright did not have much of an answer to that question and just reiterated that "things are done like that all of the time." This practice certainly raises eyebrows, but it is not relevant to the instant motion as the parties did not raise it as an issue, it was not briefed by either party, and it is unrelated to the statute of limitations or any other claims.

22, 2022, Mt. Pleasant sent Wright another proof of loss on the same claim. [1], p. 11. But that claim was previously denied by Wright on February 23, 2021, in the above referenced third letter, and Mt. Pleasant had one-year from that date, or until February 23, 2022, to file suit under 42 U.S.C. § 4072 and 44 C.F.R. part 61, appendix A(1), article VII(R) of the Standard Flood Insurance Policy. [1-18], p. 4. Accordingly, Mt. Pleasant's lawsuit is barred as untimely because it did not file suit until April 4, 2023—which was over two years past the statute of limitations. *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 387 (5th Cir. 2005) (holding that the strict rules of construction cannot be relaxed, even if a harsh result follows); *Cohen*, 924 F.3d at 782 ("[N]ot even the temptations of a hard case will provide a basis for ordering recovery contrary to the terms of a regulation, for to do so would disregard the duty of all courts to observe the conditions defined by Congress for charging the public treasury.").

B. Mt. Pleasant cannot bring extracontractual claims against Wright when they only arise because of a Standard Flood Insurance Policy claim

Having found Mt. Pleasant's breach of contract claim to be time barred, the Court now turns to Mt. Pleasant's remaining allegations against Wright. If a claim is preempted, it is necessarily a claim on which relief may not be granted. *Lashley v. Pfizer, Inc.*, 750 F.3d 470, 475-76 (5th Cir. 2014) (affirming the district court's dismissal of preempted claims); *Jianhua Ling v. Farmers Ins. Grp.*, No. CVH-16-2961, 2017 WL 451222, at *4 (S.D. Tex. Feb. 2, 2017) (dismissing preempted claims on a Rule 12(b)(6) motion).

The Standard Flood Insurance Policy is contained in regulations promulgated by FEMA. The Standard Flood Insurance Policy for dwellings is located at 44 C.F.R. Pt. 61, Appendix A(1). The last section of the Standard Flood Insurance Policy references "What Law Governs," and provides: "This policy and all disputes arising from the handling of any claim under the policy are

governed exclusively by [1] the flood insurance regulations issued by FEMA, [2] the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and [3] Federal common law." 44 C.F.R. Pt. 61, App. A(1), Art IX.

Further, the Fifth Circuit recognizes that "state law tort claims arising from claims handling by a [Write Your Own policyholder] are preempted under federal law." *Wright*, 415 F.3d at 390.[2] Courts have also consistently rejected any assertions of extracontractual claims or damages under federal common law in connection with a breach of contract claim under a Standard Flood Insurance Policy. *Wright v. Allstate Ins. Co.* ("Wright II"), 500 F.3d 390, 397-98 (5th Cir. 2007) (holding that federal common law does not provide a basis for extracontractual claims under a Standard Flood Insurance Policy). Indeed, all of Mt. Pleasant's additional claims are based on Wright's denial of Mt. Pleasant's insurance claim—or claims handling by Wright, which is preempted by Federal common law. 44 C.F.R. Pt. 61, App. A(1), Art IX.[3]

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[2] *See also* 44 C.F.R. Part 61, App. A(1) art. IX (stating that the "[flood] policy and all disputes arising from the handling of any claim under the policy are governed exclusively by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4001 et seq.), and the Federal common law."); *Grissom v. Liberty Mut. Fire Ins. Co.*, 678 F.3d 397, 400 (5th Cir. 2012) ("If the individual is already covered and in the midst of a non-lapsed insurance policy, the interactions between the insurer and insured… are 'claims handling' subject to preemption").

[3] Similarly, Mt. Pleasant asks this Court for punitive damages, pre-judgment and post-judgment interest, attorney's fees, costs of court and all other reasonable litigation expenses. [1], p. 14. But the Fifth Circuit and other district courts have consistently denied such requests when those damages and expenses relate to a breach of contract claim under a Standard Flood Insurance Policy. *Wright*, 415 F.3d at 390 ("state law tort claims arising from claims handling by a Write-Your-Own are preempted by federal law."); *Howell-Douglas v. Fid. Nat. Indem. Ins. Co.*, 24 F. Supp. 3d 579, 583 (E.D. La. 2014) ("insureds under [Standard Flood Insurance] policies have one remedy, and only one remedy for nonpayment of claims: a suit for breach of contract. And because plaintiff's lawsuit was based solely on her claim under the standard policy issued by [the insurer], which is a Write-Your-Own insurer under the National Flood Insurance Program, it is expressly prohibited to have any state law claims or extra[]contractual claims based on federal common law."); *Blount v. Wright Nat'l Flood Ins. Co.*, No. CV 22-4416, 2023 WL 1992320, at *3 (E.D. La. Feb. 14, 2023) ("As claims for judicial interest in lawsuits brought against FEMA are barred by sovereign immunity, the claim for pre and post-judgment interest must also be dismissed."); *Reilly v. Philadelphia Ins. Co.*, 605 F. Supp. 3d 1153, 1178 (D.S.D. 2022) ("the regulations detailing the financial relationship between FEMA and [Write-Your-Own] companies establish that interest charges against [Write-Your-Own] companies are direct charges on the public treasury and are therefore barred by the 'no-interest rule.'").

Mt. Pleasant alleges that Wright acted intentionally, with malice, and with objective intent to harm Mt. Pleasant. [1], p 12. Mt. Pleasant also asserts that Wright engaged in negligent claims adjusting practices. *Id.* Mt. Pleasant further asserts that Wright made a false statement by referencing the first January 11, 2021, letter in the final February 23, 2021, denial letter which Mt. Pleasant alleges is fraudulent misrepresentation because the first letter was based on a false statement. [8], pps. 22-23. According to Mt. Pleasant because the statement in the first letter—which stated that Wright did not receive Mt. Pleasant's December 2020 proof of loss—was allegedly a false statement because Wright later admitted that it did receive the proof of loss, Wright committed a fraudulent misrepresentation. *Id.* But neither the alleged false statement nor Mt. Pleasant's other claims are supported by the law such that Mt. Pleasant would be granted relief as they all arise out of Mt. Pleasant's flood insurance claim or in other words, claims handling. *Spong v. Fid. Nat. Prop. & Cas. Ins. Co.*, 787 F.3d 296, 307 (5th Cir. 2015) (finding that claims contending that the defendant was "liable for the manner in which it denied or processed their claim for flood damage, or the reasons it gave for denying coverage and voiding the policy" were preempted); *Wright II*, 500 F.3d at 397-98 (holding that federal common law does not provide a basis for extracontractual claims under a Standard Flood Insurance Policy).

Further, along with the fraudulent misrepresentation claim presented for the first time in Mt. Pleasant's opposition to Wright's Motion to Dismiss, Mt. Pleasant claims that equitable tolling would apply if the Court found fraudulent misrepresentation. [8], pps. 24-25. In general, "equitable tolling" pauses the running of, or "tolls," a statute of limitations when a litigant has pursued his rights diligently, but some extraordinary circumstance prevents him from bringing a timely action. *Lozano v. Montoya Alvarez*, 572 U.S. 1, 10, 134 S. Ct. 1224, 1231-32 188 L. Ed. 2d 200

(2014). But Mt. Pleasant did not pursue its rights diligently because it waited over two years from the denial of its claim to bring this action, when the regulation governing this kind of claim gave it a one-year time limit. [1]; 42 U.S.C. § 4072. Even still, binding precedent has found a claim for fraudulent misrepresentation arising out of claims handling by a Write Your Own policyholder to be preempted. *Wright II*, 500 F.3d at 394-96 (finding no federal common-law right of action could be inferred under National Flood Insurance Act for standard flood insurance policy holder to bring extracontractual claims against write-your-own insurer for fraudulent misrepresentation); *Campo*, 562 F.3d at 754 ("[f]ederal law preempts 'state law tort claims arising from claims handling by a [Write-Your-Own].'"). Because Mt. Pleasant's equitable tolling remedy depends solely on a claim of fraudulent misrepresentation, it is also preempted. *Id.* Even still, the February 23, 2021, "**DENIAL OF CLAIM**" letter sent to Mt. Pleasant was so clear on its face, that there is no misrepresentation that could justify tolling the statute of limitations. [1-18].

Accordingly, as Mt. Pleasant's extracontractual allegations and damages claims arise from an alleged breach of a Standard Flood Insurance Policy after the Hurricane Zeta flooding event, they are preempted by federal law. *Wright*, 415 F.3d at 389-90; *Wright II*, 500 F.3d at 398.

IV. CONCLUSION

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant's Motion to Dismiss [6] is GRANTED.

SO ORDERED, this the 21st day of March, 2024.

TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE