

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Westchester Fire Insurance Company v. Scott Daves and Keith Edwards

Daves · No. 1:24-cv-00247-DHU-JFR · Decided March 26, 2026

SUMMARY

The United States District Court for the District of New Mexico denied Scott Daves’s motion to dismiss Westchester Fire Insurance Company’s claims arising from indemnity obligations related to surety bonds issued for Bearcat Energy, LLC. Applying New York law, the court held that the alleged repeated failures to post collateral or indemnify could support application of the continuing wrong doctrine. The court also concluded that the pleadings plausibly supported an indemnification claim and potentially separate contractual obligations, making dismissal on statute-of-limitations grounds inappropriate at the pleading stage.

CASE DETAILS

COURT	United States District Court for the District of New Mexico
WRITING FOR THE COURT	David Herrera Urias
JURISDICTION	United States District Court for the District of New Mexico
DECIDED	March 26, 2026
DOCKET	1:24-cv-00247-DHU-JFR
DISPOSITION	other
PROCEDURAL POSTURE	Defendant Scott Daves moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Westchester's claims as barred by the statute of limitations.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded allegations as true and construes them in the plaintiff's favor. Dismissal based on a statute of limitations is appropriate at that stage only when the dates alleged in the complaint make clear that the claim is extinguished. Matters outside the pleadings generally may not be considered unless the motion is converted to one for summary judgment.
PRECEDENTIAL VALUE	Unknown; memorandum opinion and order from a federal district court.

TOPICS

motions to dismiss

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indemnity

breach of contract

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the complaint established on its face that Westchester's claims were barred by New York's six-year statute of limitations.
2. Whether the continuing wrong doctrine could apply to alleged repeated failures to post collateral and indemnify under the General Agreement of Indemnity.
3. Whether the pleadings plausibly alleged an indemnification claim whose limitations period accrues upon payment of the underlying claim.
4. Whether the General Agreement of Indemnity plausibly contained separate actionable obligations concerning premiums and collateral security.

HOLDINGS

1. Dismissal was not warranted because the complaint did not establish that Westchester's claims were untimely as a matter of law.
2. The doctrine may apply because the General Agreement of Indemnity imposed an ongoing duty and the complaint plausibly alleged multiple breaches of that duty.
3. The complaint plausibly alleged an indemnification claim, and the court could not determine from the pleadings that the claim was time-barred.
4. At the pleading stage, it was plausible that the agreement contained separately actionable obligations concerning premium payments and collateral security, but the court expressly declined to decide the issue because the other grounds independently defeated dismissal.

KEY QUOTATIONS

“To survive a Rule 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.””

“The continuing duty imposed by the GIA means that the continuing wrong doctrine can be applied to this action so long as the Complaint actually alleges multiple breaches of this ongoing duty.”

“The statute of limitations on a claim for indemnity or contribution accrues only when the person seeking indemnity or contribution has paid the underlying claim.”

FACTUAL BACKGROUND

Westchester issued multiple performance, payment, and maintenance bonds for Bearcat Energy, LLC, and Bearcat, Daves, Edwards, and others executed a General Agreement of Indemnity in Westchester's favor. The agreement allegedly required the indemnitors to cover Westchester's liabilities and place it in sufficient funds

upon request before Westchester was required to make bond payments. Obligees made bond demands in 2022 and 2023, and Westchester alleged that Daves and the other indemnitors failed to post collateral or indemnify it, resulting in alleged losses of approximately \$333,980.

PROCEDURAL HISTORY

Westchester filed suit against Scott Daves and Keith Edwards asserting breach of contract, injunctive relief, and unjust enrichment arising from an indemnity agreement supporting performance, payment, and maintenance bonds. Daves moved to dismiss, arguing that the claims accrued in March 2017 when Bearcat Energy became insolvent and stopped paying premiums, making the March 11, 2024 filing untimely. The court denied the motion, concluding that the pleadings plausibly alleged timely continuing breaches and an indemnification claim, while declining to consider an extrinsic affidavit at the motion-to-dismiss stage.

DISPOSITION

other

CASES CITED

- Franklin American Mortgage Co. v. University National Bank of Lawrence, 910 F.3d 270, 279 (6th Cir. 2018)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Sylvia v. Wisler, 875 F.3d 1307, 1313 (10th Cir. 2017)
- Herrera v. City of Española, 32 F.4th 980, 991 (10th Cir. 2022)
- Sierra Club v. Oklahoma Gas & Electric Co., 816 F.3d 666, 671 (10th Cir. 2016)
- Edwards v. International Union, United Plant Guard Workers of America, 46 F.3d 1047, 1050 (10th Cir. 1995)
- Utah Gospel Mission v. Salt Lake City Corp., 425 F.3d 1249, 1253 (10th Cir. 2005)
- Miller v. Glanz, 948 F.2d 1562, 1565 (10th Cir. 1991)
- Indus. Constructors Corp. v. United States Bureau of Reclamation, 15 F.3d 963, 964-65 (10th Cir. 1994)
- Jacobsen v. Deseret Book Co., 287 F.3d 936, 941 (10th Cir. 2002)
- Selkirk v. State of New York, 249 A.D.2d 818, 819 (N.Y. App. Div. 1998)
- CWC Capital Cobalt VR Ltd. v. CWC Capital Investments LLC, 195 A.D.3d 12, 18-20 (N.Y. App. Div. 2021)
- Gavin v. Club Holdings, LLC, 2016 WL 1298964, at *7 (D. Del. Mar. 31, 2016)
- Day v. Moscow, 769 F. Supp. 472, 477 (S.D.N.Y. 1991)
- Henry v. Bank of America, 147 A.D.3d 599, 601-02 (N.Y. App. Div. 2017)
- Bulova Watch Co. v. Celotex Corp., 46 N.Y.2d 606, 608-09, 611 (N.Y. 1979)
- Tiberi v. Cigna Corp., 89 F.3d 1423, 1428 (10th Cir. 1996)
- Lehman Bros. Holdings, Inc. v. Universal American Mortgage Co., LLC, 660 F. App'x 554, 566, 568 (10th Cir. 2016)
- Varo, Inc. v. Alvis PLC, 261 A.D.2d 262 (N.Y. App. Div. 1999)

- Tedesco v. A.P. Green Industries, Inc., 8 N.Y.3d 243, 247 (N.Y. 2007)
- McDermott v. City of New York, 50 N.Y.2d 211, 216 (N.Y. 1980)
- City of New York v. Lead Industries Association, Inc., 222 A.D.3d 119, 126-27 (N.Y. App. Div. 2023)
- First Indemnity of America Insurance Co. v. Kemenash, 744 A.2d 691, 698 (N.J. Super. Ct. App. Div. 2000)
- United States Credit Bureau v. Claus, 179 P.2d 36 (Cal. Ct. App. 1947)
- Balboa Insurance Co. v. Zaleski, 532 A.2d 973 (Conn. App. Ct. 1987)
- Fichel Transportation, Inc. v. State of New York, 209 A.D.3d 1153, 1155 (N.Y. App. Div. 2022)

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