26-87

No.

In The

Supreme Court of the United States

DIANA STEVENS-REYNOLDS,

Petitioner,

v.

WILSHIRE INSURANCE COMPANY;
I A T INSURANCE GROUP,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether federal courts may exclude expert testimony essential to a plaintiff's case based on disputed discovery violations without making findings regarding willfulness, bad faith, or prejudice, and without considering less drastic sanctions, thereby effectively determining the merits through procedural rulings in violation of the Due Process Clause.

2. Whether federal district courts may grant summary judgment on technical causation issues requiring expert testimony after excluding such testimony on procedural grounds, creating a procedural sequence that denies meaningful opportunity to be heard.

3. Whether courts have a duty to investigate claims of discovery non-compliance when the record contains contradictory evidence, including documentary proof of compliance, before imposing case-ending sanctions.

PARTIES TO THE PROCEEDING

Petitioner Diana Stevens-Reynolds was the plaintiff-appellant in the proceedings below.

Respondents Wilshire Insurance Company and I A T Insurance Group were the defendants-appellees in the proceedings below.

STATEMENT OF RELATED PROCEEDINGS

United States District Court for the Western District of Louisiana:

- Stevens-Reynolds v. Wilshire Insurance Company, et al., No. 2:22-CV-1238 (judgment entered **September 19, 2024**).

United States Court of Appeals for the Fifth Circuit:

- Stevens-Reynolds v. Wilshire Insurance Company, et al., No. 24-30642 (decided **March 31, 2025**; rehearing denied **June 11, 2025**)

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OPINIONS BELOW

The Fifth Circuit's opinion filed March 31, 2025 is unreported and attached as Appendix B. The Fifth Circuit's order denying rehearing filed June 11, 2025 is attached as Appendix A. The district court's final judgment is attached as Appendix C. The Western District Trial Opinion is attached as Appendix D.

JURISDICTION

The Fifth Circuit entered its original judgment denying petitioner's appeal on March 31, 2025. The Court denied rehearing on June 11, 2025. This petition is timely filed within 90 days under Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment XIV, Section 1:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Rule of Civil Procedure 26(a)(2)(B):

A witness who is retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony must provide: (i) a written report...

Federal Rule of Civil Procedure 37(c)(1):

If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.

Federal Rule of Civil Procedure 56(a):

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

STATEMENT OF THE CASE

This case arises from Hurricane Laura and Hurricane Delta damage to Petitioner's residential properties and commercial motel in Lake Charles, Louisiana, in 2020. The proceedings below created a sequence of procedural rulings that denied Petitioner meaningful opportunity to present her case, raising fundamental questions about constitutional due process requirements in federal court.

A. Factual Background

In August and October 2020, Hurricanes Laura and Delta caused extensive damage to Petitioner's insured properties. Respondent Wilshire Insurance Company allegedly failed to properly adjust and pay appropriate insurance proceeds, leading to this federal diversity action filed in 2022.

The case presented complex technical issues requiring expert analysis to distinguish between damage caused by each hurricane—a distinction critical to coverage determinations under the applicable insurance policies. Petitioner retained experts and submitted detailed damage assessments, including a comprehensive 35-page Copeland Estimate documenting motel damage.

B. Procedural History

The district court issued several adverse rulings:

Dkt. 45 (August 23, 2023): Limited recovery by applying Actual Cash Value ("ACV") without assessing policy exceptions.

Dkt. 55 (December 18, 2023): The Court granted summary judgment for Wilshire, misallocating the evidentiary burden and ignoring genuine issues of material fact.

Dkt. 70 (January 9, 2024): Set discovery deadlines that later became the basis for excluding expert testimony.

Dkt. 92 (April 19, 2024): Granted motions in limine excluding expert testimony and reports critical to distinguishing hurricane damage

Dkt. 164 (September 19, 2024): Final judgment dismissing Petitioner's motel claim and denying bad faith claims

C. Discovery Compliance Dispute

The record reveals a critical factual dispute about discovery compliance:

January 10, 2024: Petitioner's counsel provided comprehensive discovery responses via Dropbox link, including the Copeland Estimate and all expert materials. The record at Dkt. 75-1, page 3, contains email confirmation with the subject line "Reynolds v. Wilshire Discovery Responses via Dropbox." Opposing counsel responded the same day: "Got it, thanks."

January 29, 2024: Despite having acknowledged receipt, opposing counsel filed a Reply Memorandum (Doc. 77) claiming they had "never received" the estimates and that "Plaintiff has never provided a report or other documents from Copeland."

The district court excluded expert testimony without resolving this factual dispute or making findings regarding willfulness, bad faith, prejudice, or the availability of less drastic sanctions. The court then granted summary judgment on technical causation issues that required the excluded expert testimony.

D. Fifth Circuit Decision

The Fifth Circuit affirmed without addressing the due process implications of excluding expert testimony based on disputed facts, or the propriety of granting summary judgment on issues requiring the excluded expert proof. The court denied rehearing on June 11, 2025.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CREATES A CIRCUIT SPLIT ON THE STANDARDS FOR EXPERT EXCLUSION UNDER RULE 37(c)(1)

A. The Circuits Are Divided on Whether Willfulness or Bad Faith Is Required**

The circuits are divided on a fundamental question: whether courts must find willfulness, bad faith, or fault before excluding expert testimony under Rule 37(c)(1), or whether exclusion is automatic absent substantial justification or harmlessness.

1. The Sixth and Tenth Circuits Require Findings of Willfulness or Bad Faith.

The Sixth Circuit requires consideration of multiple factors before excluding expert testimony, emphasizing that exclusion "should be used sparingly." *Freeland v. Amigo,* *103 F.3d 1271, 1277 (6th Cir. 1997).* The court held that exclusion requires analysis of "whether the violation was willful or in bad faith" and "what prejudice, if any, resulted."

The Tenth Circuit similarly requires "clear evidence of willfulness, bad faith, or fault" before expert exclusion. *Wilson v. Muckala, 303 F.3d 1207, 1215 (10th Cir. 2002).* The court held that exclusion "cannot be imposed for 'mere inadvertence or good faith mistakes in discovery compliance.'"

2. The Second Circuit Requires Extreme Circumstances for Case-Ending Sanctions

The Second Circuit has held that "[d]ismissal with prejudice is a harsh remedy to be used only in extreme situations, and then only when a court finds willfulness, bad faith, or any fault on the part of the party." *Bobal v. Rensselaer Polytechnic Inst., 916 F.2d 759, 764 (2d Cir. 1990).* While this case involved dismissal rather than expert exclusion, the Second Circuit applies similar principles to sanctions that effectively end a party's case.

3. The Ninth Circuit Applies Automatic Exclusion Without Requiring Bad Faith

By contrast, the Ninth Circuit has held that courts need not find willfulness or bad faith to exclude expert testimony. *Hoffman v. Constr. Protective Servs., Inc., 541 F.3d 1175, 1179 (9th Cir. 2008).* The court noted that Rule 37 is "a self-executing, automatic sanction to provide a strong inducement for disclosure of material."

The Ninth Circuit emphasized that "a district court is not required to make a finding of willfulness or bad faith to exclude the undisclosed evidence," and that "the sanction may be imposed even when a litigant's entire cause of action . . . [will be] precluded." Id.

In Liberty Insurance Corp. v. Brodeur, 41 F.4th 1185, 1192 (9th Cir. 2022), the Ninth Circuit identified four factors that "guide the determination of whether substantial justification and harmlessness exist," but emphasized that courts have "particularly wide latitude" in imposing Rule 37(c)(1) sanctions.

4. The Eighth Circuit Also Requires Lesser Sanctions Consideration;

The Eighth Circuit has held that "the district court [must] consider lesser sanctions before imposing exclusion of witnesses that was tantamount to dismissal, but not requiring a finding of willfulness or bad faith." *Heartland Bank v. Country Club Bank, 335 F.3d 817 (8th Cir. 2003).*

5. The Fifth Circuit's Inconsistent Approach;

The Fifth Circuit nominally requires consideration of specific factors. *In Geiserman v. MacDonald, 893 F.2d 787, 791 (5th Cir. 1990),* the court established that exclusion requires consideration of: (1) the explanation for the failure to comply; (2) the importance of the testimony; (3) potential prejudice to the opposing party; and (4) the availability of a continuance to cure such prejudice.

However, the decision below failed to apply these factors or make any findings regarding willfulness, bad faith, prejudice, or alternatives—effectively applying the automatic exclusion approach of the Ninth Circuit despite Fifth Circuit precedent to the contrary.

B. This Split Has Significant Practical Consequences

This circuit split creates forum shopping incentives and dramatically different procedural protections for similarly situated litigants:

• In the <u>Sixth and Tenth Circuits</u>, parties receive protective analysis requiring findings of willfulness or bad faith

• <u>In the Ninth Circuit</u>, exclusion is automatic unless the violation was substantially justified or harmless

• <u>In the Fifth Circuit</u>, the standard is unclear and inconsistently applied

The split is particularly problematic for plaintiffs in technical cases who bear the burden of proof and require expert testimony. Whether their expert testimony is excluded may depend entirely on which circuit hears their case, even if the discovery compliance issues are identical.

C. The Constitutional Due Process Implications.

This Court has consistently held that procedural sanctions must not deprive litigants of meaningful opportunity to be heard. Logan v. Zimmerman Brush *Co., 455 U.S. 422, 433 (1982); Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970).*

Here, the district court made no findings regarding:

1. **Willfulness or bad faith**: No analysis of whether the alleged violation was intentional

2. **Prejudice**: No consideration that Respondents had documentary evidence of receiving the materials

3. **Importance**: No recognition that expert testimony was essential to Petitioner's case

4. **Alternatives**: No meaningful analysis of less drastic sanctions

The failure to make these findings before imposing case-ending sanctions violated due process, regardless of which circuit standard applies.

II. COURTS MUST RESOLVE FACTUAL DISPUTES BEFORE IMPOSING SANCTIONS

A. The Record Presents Directly Contradictory Claims.

The record presents directly contradictory claims:

- **Petitioner's evidence**: Email dated January 10, 2024, with Dropbox link and acknowledgment of receipt ("Got it, thanks")
- **Respondent's claim**: January 29, 2024, filing stating materials were "never received"

The district court-imposed case-ending sanctions without resolving this factual dispute. This violates basic due process principles requiring fact-finding before deprivation of property interests.

Under *Mathews v. Eldridge, 424 U.S. 319, 333 (1976),* due process requires balancing:

1. The private interest affected by official action;
2. The risk of erroneous deprivation through procedures used;
3. The governmental interest involved;

Here, the private interest (substantial property damage claims) was significant, the risk of erroneous deprivation (sanctions based on unresolved factual dispute) was high, and the governmental interest (efficient case management) did not require sanctions without fact-finding.

C. The Exclusion Violated Substantive Due Process

The wholesale exclusion of expert testimony essential to proving technical causation effectively determined the merits through procedural fiat. When procedural sanctions make it impossible to prove substantive claims, they violate due process regardless of their procedural validity.

The expert testimony here was not cumulative or peripheral—it was essential to distinguishing damage caused by Hurricane Laura from damage caused by Hurricane Delta, a technical determination central to coverage under the insurance policies.

III. THE PROCEDURAL SEQUENCE VIOLATED SUMMARY JUDGMENT STANDARDS

A. Summary Judgment Cannot Be Granted on Issues Requiring Excluded Expert Proof

The district court's sequence—exclude expert testimony, then grant summary judgment on issues requiring expert proof—creates a logical impossibility within the Federal Rules.

This Court's summary judgment precedent requires courts to determine whether genuine issues of material fact exist based on available evidence. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).*

When expert testimony is essential to creating genuine factual disputes on technical issues, excluding such testimony before summary judgment analysis violates the fundamental premise that factual disputes must be resolved by factfinders, not eliminated through procedural rulings.

B. The Causation Issues Required Expert Testimony

Distinguishing between damage caused by two separate hurricanes striking the same property within weeks requires specialized knowledge beyond the ken of lay jurors or judges. The policies' coverage turned on this technical causation determination.

Without expert testimony, no reasonable factfinder could determine which hurricane caused which specific damages. The district court effectively decided this technical issue by procedural ruling rather than allowing it to be resolved through proper presentation of evidence.

IV. THE DECISION UNDERMINES THE FEDERAL-STATE BALANCE IN DIVERSITY JURISDICTION

A. Federal Procedure Cannot Nullify State Substantive Rights

Under *Hanna v. Plumer, 380 U.S. 460 (1965),* federal procedural rules must not undermine state substantive law in diversity cases. Louisiana provides specific statutory protections for insurance claimants, including mandatory payment deadlines and penalties for arbitrary delays. *La. R.S. 22:1892; La. R.S. 22:1973.*

The procedural rulings below effectively nullified these state law protections by preventing Petitioner from proving her statutory claims. When federal procedural sanctions make it impossible to vindicate state-created rights, they exceed their constitutional bounds.

B. The Natural Disaster Context Heightens Due Process Concerns

Insurance disputes following natural disasters present heightened due process concerns because they involve:

1. Urgent need for recovery following catastrophic property damage

2. Power imbalance between individual disaster victims and insurance companies

3. Technical complexity requiring expert analysis

When federal procedural rules operate to deny disaster victims meaningful access to courts based on disputed discovery compliance, they raise serious constitutional questions.

V. THE COURT'S FAILURE TO INVESTIGATE CONTRADICTORY CLAIMS WARRANTS REVIEW UNDER THIS COURT'S SUPERVISORY POWER

A. Supreme Court Rule 10(a) Authorizes Review for Departure from Accepted Proceedings

Under Supreme Court Rule 10(a), this Court may grant certiorari when a lower court "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

The acceptance of contradictory factual claims without investigation represents such a departure. When the record contains:

- Documentary evidence of email transmission (January 10, 2024)
- Written acknowledgment of receipt ("Got it, thanks")
- Subsequent sworn claim of non-receipt (January 29, 2024).

Courts have a duty to resolve this factual dispute before imposing case-ending sanctions.

B. Federal Rules Impose Duty of Good Faith and Candor

Federal Rule of Civil Procedure 26(g) imposes an affirmative duty on attorneys who sign discovery responses. The rule requires certification "to the best of the person's knowledge, information, and belief formed after a reasonable inquiry" that discovery responses are complete and not interposed for any improper purpose. *Fed. R. Civ. P. 26(g)(1).*

Rule 11 similarly requires that factual contentions have evidentiary support and that attorneys not make representations to the court that lack a basis in fact. *Fed. R. Civ. P. 11(b)(3)-(4).*

When opposing counsel claimed materials were "never received" despite having acknowledged receipt in writing, they violated these fundamental duties of candor. The district court's acceptance of these contradictory claims without investigation compounds the violation.

C. <u>Courts Have Authority and Duty to Address Discovery Misconduct</u>

This Court has recognized federal courts' inherent power to sanction attorney misconduct that undermines judicial proceedings. *Chambers v. NASCO, Inc., 501 U.S. 32, 44-46 (1991)* ("Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates") (quoting *Anderson v. Dunn, 19 U.S. (6 Wheat.) 204, 227 (1821)).*

The Court in Chambers emphasized that this inherent power includes authority to sanction conduct that "abuses the judicial process" or demonstrates "bad faith." *501*

U.S. at 45-46. False representations about discovery compliance fall squarely within conduct that "abuses the judicial process."

D. <u>The Qualcomm Case Demonstrates Consequences of Discovery Misrepresentations</u>.

The seminal case addressing attorney misrepresentations in discovery is *Qualcomm Inc. v. Broadcom Corp., No. 05cv1958-B (BLM), 2008 WL 66932 (S.D. Cal. Jan. 7, 2008).* There, the court found that attorneys "used the lack of evidence to repeatedly and forcefully make false statements and arguments to the court and jury" based on inadequate discovery searches.

The magistrate judge ordered six outside counsel to participate in a Case Review and Enforcement of Discovery Obligations ("CREDO") program, explaining:

While no one can undo the misconduct in this case, this process, hopefully, will establish a baseline for other cases. Perhaps it also will establish a turning point in what the Court perceives as a decline in and deterioration of civility, professionalism and ethical conduct in the litigation arena."

The court emphasized that attorneys have an affirmative duty to ensure adequate discovery searches and cannot "blindly accept" client assurances when warning signs exist. Id. at *14-15.

While the Qualcomm sanctions were later vacated on procedural grounds because the attorneys were denied opportunity to defend themselves, the underlying principle remains: courts have authority and duty to address false representations about discovery compliance.

E. Courts Must Investigate Before Imposing Sanctions Based on Disputed Facts.

The due process concerns in Qualcomm are directly relevant here. The district court in that case initially imposed sanctions without allowing attorneys to fully defend themselves, leading to vacatur. *Qualcomm Inc. v. Broadcom Corp., No. 05cv1958-RMB (BLM), 2010 WL 1336937, at *1 (S.D. Cal. Apr. 2, 2010).*

On remand, after full investigation, the magistrate judge found that while "significant errors" occurred, there was "insufficient evidence to prove bad faith." Id. at *25. This demonstrates the critical importance of investigating factual disputes before imposing case-ending sanctions.

Here, the district court-imposed case-ending sanctions without investigating the direct contradiction between:

- Documented email delivery with acknowledgment (January 10, 2024)
- Sworn statement that materials were "never received" (January 29, 2024)

This failure to investigate before sanctioning violates basic due process and requires this Court's supervisory intervention.

F. The Pattern Threatens Judicial Integrity

This Court has used its supervisory power to address conduct that threatens federal court integrity. *Link v. Wabash R.R. Co., 370 U.S. 626, 630-31 (1962)* (courts have inherent power "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases").

Imposing sanctions based on disputed factual claims without investigation creates several problems:

1. Incentivizes false discovery claims: Parties may calculate that courts will accept compliance claims without scrutiny

2. Undermines attorney certification requirements: *Rules 26(g) and 11* become meaningless if courts don't investigate contradictory claims

3. Denies due process: Sanctions imposed on disputed facts without fact-finding violate fundamental fairness

4. Damages judicial integrity: Public confidence erodes when courts accept contradictory sworn statements

G. The Issue Affects Numerous Cases Nationwide

Discovery disputes are endemic in federal litigation. The procedural framework established below—accepting compliance claims without investigating contradictory documentary evidence—will affect thousands of cases and create incentives for questionable discovery practices.

Federal Rule 26(g)(3) requires that courts "must impose an appropriate sanction" for violations. But this presupposes that violations have been established through proper fact-finding, not assumed based on one party's claims despite contradictory evidence.

VI. THE QUESTIONS PRESENTED ARE OF EXCEPTIONAL IMPORTANCE

A. The Circuit Split on Expert Exclusion Standards Requires Resolution.

The conflict between circuits that require findings of willfulness or bad faith (Sixth, Tenth, Second) and circuits that apply automatic exclusion (Ninth) creates unequal treatment of similarly situated litigants and undermines uniform application of federal procedural rules. This split affects thousands of cases involving technical expert testimony across all areas of federal litigation.

The Fifth Circuit's inconsistent application of its own precedent compounds the problem, leaving litigants uncertain which standard will apply.

B. The Summary Judgment Issue Affects Technical Cases Nationwide.

The interaction between expert exclusion and summary judgment affects all cases requiring expert proof on technical issues. The decision below creates a roadmap for defendants to eliminate expert testimony through discovery disputes, then obtain summary judgment on the very issues requiring expert analysis.

C. Natural Disaster Litigation Is Increasing

Climate-related disasters are increasing in frequency and severity. The procedural framework established below will affect thousands of insurance claims by disaster victims throughout federal courts.

D. The Federal-State Balance Requires Protection

The decision below demonstrates how federal procedural rules can nullify state substantive protections in diversity cases, particularly affecting insurance claims governed by state consumer protection statutes.

VI. THIS CASE PRESENTS AN IDEAL VEHICLE

This case cleanly presents all issues without factual complications or procedural obstacles:

1. Clear factual dispute: Documentary evidence of discovery compliance contradicted by opposing counsel's claims

2. No findings: District court made no findings regarding willfulness, bad faith, prejudice, or alternatives

3. Essential testimony: Expert proof was necessary to establish technical causation

4. Summary judgment: Court granted summary judgment on issues requiring the excluded expert testimony

5. State law implications: Federal procedure nullified Louisiana insurance protections

6. Final judgment: All issues are preserved for review

The Fifth Circuit's summary affirmance without addressing these constitutional issues makes this an ideal vehicle for clarifying the due process requirements for discovery sanctions and their interaction with summary judgment standards.

CONCLUSION

The decision below violated fundamental due process principles by:

1. Excluding expert testimony without making findings regarding willfulness, bad faith, or prejudicing conflict with established circuit precedent

2. Failing to resolve contradictory factual claims about discovery compliance before imposing case-ending sanctions

3. Granting summary judgment on technical issues requiring the excluded expert proof

4. Using federal procedural rules to nullify state substantive insurance protections

The circuit split identified here—between circuits requiring findings of willfulness or bad faith versus circuits applying automatic exclusion—creates forum shopping incentives and denies similarly situated litigants equal procedural protections. The Fifth Circuit's failure to apply its own precedent requiring specific findings compounds this problem and requires this Court's intervention.

These violations affected Petitioner's ability to pursue substantial property damage claims following two major hurricanes and establish a procedural framework that will affect thousands of similar cases nationwide.

For these reasons, the petition for writ of certiorari should be GRANTED.

Respectfully submitted,

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