UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-1385

JANE PARKIN; DAVID HUGHES,
individually and on behalf
of all others similarly situated

v.

AVIS RENT A CAR SYSTEM, LLC;
BUDGET RENT A CAR SYSTEM, INC.;
AVIS BUDGET GROUP, INC.

Budget Rent A Car System, Inc.; Avis Budget Group, Inc.,
Appellants

On Appeal from the U.S. District Court, D.N.J.
Judge Christine P. O'Hearn, No. 1:22-cv-05481

Before: RESTREPO, PHIPPS, and MASCOTT, *Circuit Judges*
Submitted: Jan. 22, 2026; Decided: August 24, 2026

OPINION OF THE COURT

PHIPPS, *Circuit Judge*.

While separately visiting the United States, two foreign nationals rented vehicles from the same rental car company. In booking those rentals, they were offered a package of upgrades, which included supplemental liability insurance, and they chose that package. In formalizing the rental agreement on site before picking up the vehicles, they each received a 'rental jacket,' a folded paper containing additional terms and conditions of the rental. One of the terms in that rental jacket stated that for their chosen upgrade package, supplemental liability insurance would be provided through an excess automobile policy issued to the rental car company. Another of the terms in the rental jacket was a requirement to arbitrate all claims except those subject to a small-claims exception.

Both customers later came to believe that the rental car company did not purchase supplemental liability insurance through an excess automobile policy issued to the company, but rather it intended to indemnify customers from its own funds for any supplemental liability claims. On that premise, they initiated this putative class action against the rental car company and its parent corporation in the District Court for breach of contract, fraudulent misrepresentation, and for violations of a state consumer protection statute. In defending the case, the rental car company reserved its right to compel arbitration, and after deposing the two customers in discovery, it relied on the arbitration clause in the rental jacket to move to compel arbitration. The District Court denied that motion on the grounds that the rental car company, by litigating the case into discovery, had impliedly waived its right to arbitration.

Through this interlocutory appeal, the rental car company and its parent corporation challenge that ruling. For the reasons below, on *de novo* review of the legal conclusion of waiver, *see White v. Samsung Elecs. Am., Inc.*, 61 F.4th 334, 338 (3d Cir. 2023), we will VACATE the District Court's order and REMAND for further consideration of the motion to compel.

FACTUAL BACKGROUND

On separate trips to the United States between September 2016 and November 2019, Jane Parkin and David Hughes, both citizens of the United Kingdom, rented vehicles from Budget Rent A Car System, Inc., referred to herein as 'Budget.' Budget is a subsidiary of Avis Budget Group, Inc., abbreviated herein as 'ABG,' and both entities are citizens of Delaware by incorporation and New Jersey by virtue of the locations of their principal places of business.

Instead of making reservations directly with Budget, Parkin and Hughes used third-party websites to reserve the rental vehicles. For each rental, which included at least two in Massachusetts and two in Florida, they selected a rental package that included additional supplemental liability insurance for damages caused to third parties.

When Parkin and Hughes arrived to pick up their vehicles, they were each presented with a rental form by a Budget sales representative. Those forms listed optional products and services that each renter had accepted, including supplemental liability insurance. The forms also stated that the renter has "reviewed&agreed to all notices&terms here and in the rental jacket." Parkin Budget Rental Agreement (JA144); Hughes Budget Rental Agreements (JA146–47). Both Parkin and Hughes signed those forms before they each received a rental jacket from a Budget sales representative.

The rental jackets contained several additional terms and conditions for the rental agreements. Those included statements that supplemental liability insurance coverage would be provided from "an excess automobile policy issued to Budget." Mass. Budget Rental Jacket ¶ 22 (JA153); Fla. Budget Rental Jacket ¶ 22 (JA163). The rental jackets also included a mandatory arbitration clause that had an exception for disputes within the scope of a small-claims court's authority.

After Parkin and Hughes's rentals, this Court in *Bacon v. Avis Budget Group, Inc.*, 959 F.3d 590 (3d Cir. 2020), addressed the binding effect of an arbitration clause contained in a rental jacket. In that case, another subsidiary of ABG had customers sign rental agreements before providing them with rental jackets. *Id.* at 595. Under those circumstances, and based on the application of New Jersey and Florida contract law, *Bacon* held that the arbitration clause was not binding on customers – at least as long as the customer was not on notice of the arbitration clause when signing the rental agreement. *Id.* at 600–02.

PROCEDURAL HISTORY

In September 2022, Parkin and Hughes filed this three-count putative class action in the District Court against Budget, ABG, and an affiliated corporate entity.[1] Their suit was not a coverage dispute in the traditional sense – neither of them had been in an accident, and neither of them had submitted a claim that Budget denied. Rather, on the premise that they did not receive supplemental liability insurance coverage through an excess automobile policy issued to Budget as represented in the rental jacket, they brought claims for breach of contract, fraudulent misrepresentation, and violations of the Florida Deceptive and Unfair Trade Practices Act, *see* Fla. Stat. §§ 501.201–501.213. For relief, they sought over $5 million in damages on behalf of a nationwide class of renters, a class of renters in Massachusetts, and a class of renters in Florida. With that amount in controversy and minimal diversity among the parties, the lawsuit was within the District Court's diversity jurisdiction under the Class Action Fairness Act.[2]

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[1] That entity was Avis Rent A Car System, LLC, which was treated as a citizen of Delaware and New Jersey based on the citizenship of its alleged sole member, ABG. *See Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 420 (3d Cir. 2010) (holding that "the citizenship of an LLC is determined by the citizenship of its members"). Through a later stipulation by the parties, Avis Rent A Car System, LLC was dismissed from the case without prejudice.

[2] *See* 28 U.S.C. § 1332(d)(2)(B); *Life of the S. Ins. Co. v. Carzell*, 851 F.3d 1341, 1346 (11th Cir. 2017) (explaining that minimal diversity jurisdiction is satisfied if "any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State" (quoting 28 U.S.C. § 1332(d)(2)(B))).

Before answering the complaint, Budget and ABG moved to dismiss each of the three counts for failure to state a claim for relief under Rule 12(b)(6).[3] With respect to the breach-of-contract claim, they argued that the allegations were insufficient to establish a contractual relationship. For the fraudulent misrepresentation claim, they challenged the particularity of the pleadings, *see* Fed. R. Civ. P. 9(b), the absence of allegations of reasonable reliance on a misrepresentation, and the failure to allege non-conclusory facts pertaining to fraudulent intent. And with respect to the claim under the Florida Deceptive and Unfair Trade Practices Act, they argued primarily that it was duplicative of the breach-of-contract claim and was therefore outside the reach of that statute. Budget and ABG did not mention the possibility of arbitration in their opening brief, but their reply brief included a footnote stating that they "reserve[d] the right to move to compel arbitration." Defs.' Reply Mem. of Law in Supp. of Mot. to Dismiss 4 n.1 (JA49 n.1).

That motion to dismiss had mixed success. After determining that the allegations of a contractual agreement were plausible, the District Court denied the motion to dismiss as to the breach-of-contract claim. *See Parkin v. Avis Rent A Car Sys., LLC*, 2023 WL 4045049, at *4–5 (D.N.J. June 16, 2023). But because it concluded that a contract plausibly existed, the District Court reasoned that the other two claims were not viable, and it dismissed those. *Id.* at *5–7.

As the case progressed, Budget and ABG signaled on multiple occasions that they had an arbitration defense. In answering the complaint in June 2023, they pleaded, as an affirmative defense, that the claims against them were barred

[3] ABG and Avis Rent A Car System, LLC, which was still a party to the case at that time and had joined the motion to dismiss, also argued, unsuccessfully, that they were improper parties because there were no allegations that Parkin or Hughes had any interactions with them.

by the arbitration clause in the rental agreements. In the joint discovery plan submitted in August 2023, they reserved the right to compel arbitration "pending further discovery." Joint Proposed Disc. Plan 3 (JA93). And in making initial disclosures later that month, they identified "an agreement to arbitrate disputes" as relevant to their potential defenses. Initial Disclosures of Defs. 4 (JA140).

As part of their discovery efforts, Budget and ABG sought to depose Parkin and Hughes. The parties were unable to schedule the depositions, but after an order from a magistrate judge, Parkin and Hughes were deposed in February 2024 in the United States. During those depositions, both Parkin and Hughes were asked whether they believed that the information contained in the rental jackets was part of their rental agreements with Budget, and they replied affirmatively.

About two months later, in April 2024, Budget and ABG moved to compel arbitration. In a later-filed memorandum in support, they argued that based on their deposition responses, Parkin and Hughes were subject to arbitration because, unlike the plaintiffs in *Bacon*, they knew of the arbitration clause in the rental jackets when signing their rental agreements. Budget and ABG further argued that because Parkin and Hughes were relying on the supplemental-liability-insurance provision in the rental jackets, they were equitably estopped from avoiding the arbitration clause, which was also contained in the rental jackets.

Parkin and Hughes opposed that motion on three fronts. First, they argued that like the plaintiffs in *Bacon*, they were not subject to the arbitration clause. Second, they asserted that even if they were subject to the arbitration clause, Budget and ABG impliedly waived their arbitration rights by litigating for a year and a half before moving to compel arbitration. And third, they contended that even if the arbitration clause applied and was not waived, their claims fit within the small-claims exception.

The District Court denied the motion to compel for the second rationale that Parkin and Hughes advanced – implied waiver – and did not address the remaining arguments in the briefing. *Parkin v. Avis Rent A Car Sys., LLC*, 774 F. Supp. 3d 707, 714 (D.N.J. 2025). In finding an implied waiver, the District Court determined that Budget and ABG's conduct during the litigation was "inconsistent with a genuine intent to arbitrate," and that Budget and ABG had "pivoted to arbitration" approximately eight months into discovery, "when it became clear that they would not be able to obtain an early dismissal." *Id.* at 713. Because such conduct "demonstrate[d] a strategic shift rather than a genuine attempt to determine arbitrability early in the case," the District Court denied the motion to compel. *Id.* at 714.

Through a notice of appeal of that order, Budget and ABG invoked this Court's appellate jurisdiction, *see* 9 U.S.C. § 16(a)(1)(C), and in response to that interlocutory appeal, the District Court stayed the proceedings, *see Coinbase, Inc. v. Bielski*, 599 U.S. 736, 741–43 (2023).

During the pendency of this appeal, this Court decided *Valli v. Avis Budget Group, Inc.*, 162 F.4th 396 (3d Cir. 2025), an interlocutory appeal of a denial of a motion to compel arbitration. That case was brought by a putative class against ABG for fees that its subsidiaries had charged renters for traffic and parking tickets they received during the rental period. *Id.* at 401–02. After litigating the case for over seven years, ABG moved to compel arbitration based on an arbitration clause in its post-2016 rental agreements (those from the same time period as the rental agreements at issue here), and the district court held that through its conduct during the litigation, ABG had impliedly waived its right to arbitrate. *Id.* at 401, 404–05. In evaluating the implied-waiver issue, this Court accounted for futility principles and concluded that the implied-waiver analysis starts at the moment the movant knows of its arbitration rights as opposed to when the arbitration rights are enforceable. *Id.* at 409–10. The *Valli* decision also acknowledged that a movant can preserve a known but presently unenforceable arbitration right by providing "clear, reasonably prompt record notice of its intent to exercise its arbitration right," followed by a prompt motion to compel once the arbitration right becomes enforceable. *Id.* at 410. Based on those and other principles, *Valli* vacated the denial of the motion to compel arbitration and remanded the case to the district court. *Id.* at 416. The parties to this appeal received an opportunity to address the impact of *Valli* on this case, and they submitted supplemental letter briefs.

DISCUSSION

A known right to compel arbitration under the Federal Arbitration Act, *see* 9 U.S.C. § 4, can be waived only if the right holder intended to relinquish or abandon that right. *See Morgan v. Sundance, Inc.*, 596 U.S. 411, 417 (2022) (explaining waiver as "the intentional relinquishment or abandonment of a known right" (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993))). An express renunciation of rights is the mainline method of waiver, but arbitration rights can also be impliedly waived if a right holder "act[s] inconsistently with an intent to assert its right." *White*, 61 F.4th at 339–40. To protect its right against an implied waiver, a right holder may expressly reserve its right to arbitrate, and such a reservation cuts strongly against a finding of an implied waiver. *See Valli*, 162 F.4th at 410 (recognizing that after consistent, express reservations, "there is no uncertainty to resolve by inference and the predicate for implied waiver largely collapses"). But this Court's precedent does not treat a reservation of the right to arbitrate as an absolute bar to finding an implied waiver of the right – a party may impliedly waive its right despite an express reservation when its conduct unambiguously indicates a relinquishment or abandonment of the right. *See id.* at 410 n.15 (explaining that "[n]ominal reservations" will not prevent a finding of waiver where "a party's conduct is so inconsistent with an intent to arbitrate that it evinces an intentional relinquishment"). With or without a reservation of rights, the analysis of intentionality in the context of an implied waiver of a right to arbitration must also account for the realities that litigation and arbitration are alternative methods for formal dispute resolution and that a party with a right to arbitration need not assert that right and may instead elect litigation. *See* Michael A. Helfand, *Arbitration's Counter-Narrative: The Religious Arbitration Paradigm*, 124 Yale L.J. 2994, 3000–01 (2015) (explaining that "over the past three decades, the Supreme Court's answer to" whether "arbitration serve[s] as a viable alternative to litigation" has been "an unequivocal and emphatic yes"). Accounting for those, the more that a party with a right to arbitration seeks to resolve the dispute through litigation, the more likely it is that the party has intentionally relinquished its right to arbitration.

Accordingly, assessing an implied intention to relinquish or abandon a known right to compel arbitration once litigation has commenced depends on the procedural posture of the case and the conduct of the party asserting the right. *See Gray Holdco, Inc. v. Cassady*, 654 F.3d 444, 451 (3d Cir. 2011) (explaining that the waiver inquiry is "necessarily case specific and thus depends on the circumstances and context of each case"). If allegations on the face of a complaint provide a sufficient basis for a successful motion to compel arbitration, then a defendant who prolongs the litigation in court instead of moving to compel arbitration is at risk of impliedly waiving the ability to compel arbitration based on nothing more than the allegations in the complaint. *See Young v. Experian Info. Sols., Inc.*, 119 F.4th 314, 319 (3d Cir. 2024) (explaining that when the complaint makes clear that "a party's claims are subject to an enforceable arbitration clause," the Rule 12(b)(6) standard applies).[4] When the assertion of the right to arbitrate against a

[4] Implied waiver on such facts is a possibility but not an absolute rule because any determination of implied waiver is circumstance dependent, and the nature of the continued litigation matters. For instance, a motion to change venue, which itself is subject to waiver, *see* Fed. R. Civ. P. 12(h)(1),

party depends on the development of a factual record, the lack of a motion to compel arbitration before the development of a factual record needed for such a motion is not evidence of an intention to relinquish or abandon the right, and it would be very difficult, if not impossible, to find an implied waiver of a reserved arbitration right before that factual issue has been resolved. *See Valli*, 162 F.4th at 409–10 (explaining that a court may infer waiver when a party's actions are "inconsistent with a desire to arbitrate," but that a party which has reserved its rights does not impliedly waive its right to arbitration by refraining from moving to compel when doing so would be futile); *cf. Guidotti v. Legal Helpers Debt Resol., LLC*, 716 F.3d 764, 774, 776 (3d Cir. 2013) (explaining that the summary-judgment standard applies to motions to compel arbitration based on a factual record). In that same vein, the Federal Arbitration Act, through its multiple references to a "jury trial," 9 U.S.C. § 4, accounts for the possibility that a factual dispute over arbitrability would have to be resolved at a trial. *See Guidotti*, 716 F.3d at 776 (explaining that if "summary judgment is not warranted . . . the 'court may then proceed summarily to a trial'" on the issue of arbitrability (quoting *Somerset Consulting, LLC v. United Cap. Lenders, LLC*, 832 F. Supp. 2d 474, 482 (E.D. Pa. 2011))); *see also Nicosia v. Amazon.com, Inc.*, 834 F.3d 220, 229 (2d Cir. 2016) ("If there is an issue of fact as to the making of the agreement for arbitration, then a trial is necessary." (quoting *Bensadoun v. Jobe-Riat*, 316 F.3d 171, 175 (2d Cir. 2003))). Thus, in some instances, a case may have to go to trial – at least on the question of arbitrability – and that possibility also bears on the implied-waiver analysis.

In this case, there is no express waiver at issue, and the challenge is to the District Court's finding of an implied waiver based on conduct during the litigation. *See Parkin*, 774 F. Supp. 3d at 712–14. Some of that conduct occurred

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is less indicative of an implied waiver of arbitration than is a motion to expedite discovery and proceed to trial on the merits.

before an express reservation of rights, and some of it took place after an express reservation of rights. Specifically, Budget and ABG moved to dismiss the complaint before reserving their right to move to compel arbitration, and while they preserved their right to arbitration as an affirmative defense in their answer, they also litigated the case months into discovery before moving to compel arbitration. Critically, the arbitration defense that they asserted was governed by the rule of *Bacon*, and without allegations in the complaint needed to meet that rule, the arbitration defense required factual development with respect to each customer's knowledge at the time of signing a rental agreement. So, as explained below, the occurrence of other procedural events in the litigation before the filing of the motion to compel does not, under these circumstances, amount to an implied waiver.

Some of the implied-waiver analysis takes place without the need to account for an express reservation of the right to arbitration because when Budget and ABG filed their motion to dismiss, they had not yet expressly reserved their right to arbitrate. In one sense, by filing a motion to dismiss, instead of filing an answer asserting the arbitrability defense, Budget and ABG did demonstrate a preference for litigation over arbitration. *See White*, 61 F.4th at 340 (weighing a defendant's motion to dismiss in favor of finding waiver of its arbitration right). But that choice was not pronounced enough to imply a waiver. *See generally id.* at 340–41 (holding that a defendant implicitly waived its arbitration right by failing to "inform plaintiffs of the potential for arbitration at any point" in the three years of litigation prior to the month it moved to compel). Under *Bacon*, the allegations in the complaint did not provide an adequate basis to move to compel arbitration. So, without a meaningful opportunity to move to compel arbitration, the immediate options before Budget and ABG were not whether to litigate or to seek arbitration, but rather how to litigate. From that perspective, their choice to move to dismiss instead of to answer the complaint and proceed to discovery is not a clear enough indication of a relinquishment or abandonment to constitute an implied waiver of the right to arbitration.

The remainder of the implied-waiver analysis must account for Budget and ABG's express reservation of their right to arbitrate. Budget and ABG expressly and formally reserved that right by identifying it as an affirmative defense in their answer. And they twice confirmed that reservation of the right – once in their joint proposed discovery plan, and once in their initial disclosures. But because the allegations in the complaint did not provide adequate grounds for compelling arbitration, Budget and ABG needed discovery to discern whether there was a factual basis under *Bacon* for such a motion. Indeed, after they had deposed Parkin and Hughes, they moved to compel arbitration based on testimony Parkin and Hughes gave in their depositions about their knowledge of the contractual terms contained in the rental jackets.[5] In addition, Budget and

[5] Parkin and Hughes also contend that to avoid an implied waiver, Budget and ABG should have requested separate, preliminary discovery on arbitration. While such an approach to discovery is permissible, *see Guidotti*, 716 F.3d at 776, a defendant's preference for how to shoulder the burdens of discovery is not a particularly strong indication of an intention to relinquish an asserted affirmative defense. *See Valli*, 162 F.4th at 412 (explaining that "discovery directed at non-arbitrable claims does not, by itself, waive the right to arbitrate arbitrable claims," and "hesitation" to infer waiver from discovery conduct is "apt where, as here, the party has repeatedly put its intent to arbitrate on the record"); *cf. Morgan*, 596 U.S. at 419 (holding that courts may not "us[e] custom-made rules, to tilt the playing field in favor of (or against) arbitration"). *But cf. White*, 61 F.4th at 340 (holding that a defendant, which had not reserved its right to arbitrate, implicitly waived the right because it "continuously sought and agreed to stays in discovery—which may have resulted in receipt of the necessary" information to determine arbitrability).

ABG did not unduly delay that motion; they filed it within a reasonably prompt time (about two months) after the depositions. Those circumstances do not provide the certainty needed to find an intentional relinquishment or abandonment of the expressly reserved right to compel arbitration.

The intervening *Valli* decision only strengthens the conclusion that the District Court erred in finding an implied waiver of arbitration. *Valli* reiterated *White*'s holding that the implied-waiver analysis begins when "a defendant is on notice that a claim '*could* be arbitrable.'" *Valli*, 162 F.4th at 408 (quoting *White*, 61 F.4th at 340). But *Valli* demonstrated that waiver – the "intentional relinquishment or abandonment of a known right," *Morgan*, 596 U.S. at 417 (quoting *Olano*, 507 U.S. at 733) – depends on more than just knowledge; it also requires intentionality. *Valli*, 162 F.4th at 409–10 (holding that an inference that a party intended to forgo arbitration "can be reasonably drawn only when there at least appears to be uncertainty as to what the party actually intends"). And while Budget and ABG may have known that arbitrability could be a defense, they were not obligated to move to compel arbitration before having a meaningful opportunity to investigate facts related to arbitrability through "an inquiry reasonable under the circumstances." Fed. R. Civ. P. 11(b); *see also* 9 U.S.C. § 6 (providing that any application, such as one to compel arbitration, "shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided"); *Morgan*, 596 U.S. at 419 (explaining that 9 U.S.C. § 6 "is simply a command to apply the usual federal procedural rules" to federal arbitration applications). Thus, their decision not to move to compel arbitration until after they had engaged in some discovery, in particular the depositions of Parkin and Hughes, does not establish an intentional relinquishment or abandonment of the right to arbitrate. Rather, that conduct is consistent with developing a factual basis needed for a motion to compel arbitration.

CONCLUSION

For the foregoing reasons, the District Court's order will be VACATED and the case will be REMANDED.[6]

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[6] On remand, the District Court should address, as needed, the other arguments presented in the briefing on the motion to compel, perhaps with an opportunity for supplementation. For instance, it appears that *Valli* rejected a similar small-claims defense as that raised by Parkin and Hughes. *See Valli*, 162 F.4th at 414.