# UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2660

THOMAS YERANSIAN, in his capacity as the representative of holders of certain contingent value rights under the Contingent Value Rights Agreement dated October 15, 2010,
Appellant

v.

MARKEL GROUP INC., a Virginia corporation agent of Markel Corporation

---

On Appeal from the U.S. District Court, D. Del.
Judge Joel H. Slomsky, No. 1:25-cv-00192

Before: KRAUSE, PORTER, and AMBRO, *Circuit Judges*
Submitted: Sept. 23, 2026; Filed: Nov. 4, 2026

---

NONPRECEDENTIAL OPINION*

PORTER, *Circuit Judge*. Thomas Yeransian sued Markel Group Inc. for breach of contract, alleging that Markel had and breached a duty to reimburse Yeransian for attorney's fees and costs he incurred in a long-running dispute with Markel. Because Yeransian had not moved for fees and costs under Federal Rule of Civil Procedure 54(d)(2) in his prior lawsuits, the District Court deemed his claim waived under Rule 54 and barred by res judicata. The Court therefore dismissed his complaint. We will affirm.

---

* This is not an opinion of the full Court and, under I.O.P. 5.7, is not binding precedent.

I

The contract and controversies that color this appeal date back over a decade. According to Yeransian's dismissed complaint, Yeransian is the current representative of former shareholders of Aspen Holdings, Inc., which Markel purchased and merged with in 2010. The consideration for that purchase included contingent value rights ("CVRs") that were governed by an agreement (the "CVR Agreement") between Markel and Aspen. The CVRs were part of the purchase price that would be paid to Aspen's shareholders at a later date and adjusted up or down based on various contingencies. The CVR Agreement stated that Markel would calculate and pay Aspen's former shareholders (the "Holders") after eight years or, if the holders elected, after five. The CVR Agreement also stated that Markel would provide the Holders with annual reports on the preliminary calculations of adjustments. If the Holders disagreed with Markel's calculations, the CVR Agreement provided for independent industry experts to calculate the CVR's value.

The CVR Agreement further specified that if the Holders' representative sued Markel to enforce the CVR Agreement, Markel would reimburse the representative for attorney's fees and costs incurred. The relevant provision, § 8.6(b), states as follows:

> In the event that a court of competent jurisdiction makes a final determination following expiration of all applicable appeals periods related thereto in favor of the Holders in any dispute related to the enforcement of the provisions contained in this Agreement or the Merger Agreement, [Markel] shall reimburse the Holder Representative for all documented fees and expenses that were reasonably incurred by the Holder Representative in connection with such dispute. Any such fees and expenses incurred by the Holder Representative shall be paid by [Markel] in immediately available funds to an account designated by the Holder Representative within ten Business Days of request therefor by the Holder Representative.

J.A. 73.

In 2015, Markel informed the Holders that the CVRs had a negative value. When the Holders invoked the expert valuation process, Markel sued the Holder's representative. The parties settled. When Markel issued a subsequent valuation with which the Holders again disagreed, Yeransian sued as their representative, seeking payment of the initial, unadjusted principal. Markel then invoked the valuation process, and the District Court stayed the action and directed the parties to pursue the valuation process. While that process was ongoing, Yeransian sued Markel two more times, first in 2018 and then in 2020. The District Court stayed and consolidated those actions with Yeransian's original suit.

In 2021, the expert valuation process concluded, finding that Markel undervalued the CVRs by over $13 million. Markel subsequently paid the CVR value as determined by the experts. On June 8, 2023, the District Court dismissed Yeransian's consolidated actions. Yeransian appealed, and we affirmed. *Yeransian v. Markel Grp. Inc.*, No. 23-2234, 2024 WL 2933016 (3d Cir. June 11, 2024). On July 18, 2023, the District Court granted Yeransian's motion to confirm the arbitration award based on its prior acknowledgment that the expert valuation process was a limited arbitration. Markel did not appeal or move to vacate, modify, or correct the award.

Three months later, Yeransian served a demand for fees and costs on Markel. Markel refused that demand. In February 2025, Yeransian sued Markel again. He brought one claim for breach of contract and sought damages in the amount of fees and costs he previously incurred, plus interest. Markel moved to dismiss.

The District Court dismissed Yeransian's claim as waived under Rule 54(d)(2) and barred by res judicata. The Court began its analysis by stating that "the instant case is merely a request for attorney's fees arising under a private agreement between the parties." J.A. 23. Such a claim for fees, the Court explained, must be brought by motion under Rule 54(d)(2) unless substantive law requires those fees to be proven at trial as damages. Finding that Delaware law does not require fees to be proven as damages and that § 8.6(b) is a fee-shifting provision, the Court concluded that Yeransian should have moved for fees within 14 days of the order confirming the arbitration award. Because Yeransian did not, he waived his claim for fees. The District Court then also held that because Yeransian could have asserted his claim for fees in the prior litigation, res judicata barred his breach-of-contract claim. Yeransian timely appealed.

II

The District Court had jurisdiction under 28 U.S.C. § 1332. We have jurisdiction under 28 U.S.C. § 1291 and review the District Court's grant of a motion to dismiss de novo. *Doe v. Trs. of Princeton Univ.*, 184 F.4th 193, 201 (3d Cir. 2026).

When a party has the opportunity to pursue a right in federal court under the Federal Rules of Civil Procedure but does not do so, that party typically does not get a second chance. For instance, "[f]ailure to raise an affirmative defense by responsive pleading or by appropriate motion generally results in the waiver of that defense." *Charpentier v. Godsil*, 937 F.2d 859, 863 (3d Cir. 1991). Similarly, a party's failure to plead a compulsory counterclaim bars that party from litigating it in a subsequent action. *See M.R. v. Ridley*

*Sch. Dist.*, 744 F.3d 112, 121 (3d Cir. 2014). And that is not to mention circumstances in which procedural rules may close the federal courthouse doors completely—such as when the presence of an indispensable party defeats diversity jurisdiction. *See Publicker Indus., Inc. v. Roman Ceramics Corp.*, 603 F.2d 1065, 1069 (3d Cir. 1979); *see also* Fed. R. Civ. P. 19.

The same is true here. Rule 54(d)(2) states the time and procedure for seeking fees when those fees need not be proved at trial as damages. Yeransian concedes that no substantive law *requires* his claim for fees to be proven at trial as damages. And he does not show a conflict between Rule 54(d)(2)'s requirements and the predicates to him exercising his contractual right. After all, Yeransian was free to move for extensions of time to file a motion for fees until the appeal deadline passed or he had made an unsuccessful demand on Markel. The simple fact, however, is that Yeransian failed to attempt to move for fees. Accordingly, having missed his opportunity to litigate his right to fees in federal court, he cannot seek to do so now, whether directly by claiming fees or indirectly through a separate cause of action. *See Port of Stockton v. W. Bulk Carrier KS*, 371 F.3d 1119, 1121–22 (9th Cir. 2004) (holding that a party could not seek contractual attorneys' fees because it failed to timely move under Rule 54(d)(2) for that relief in previous litigation).

Yeransian raises a variety of arguments to the contrary, but none have merit. First, he spends considerable time arguing that § 8.6(b) of the CVR Agreement is a damages provision, not a fee-shifting provision. But how § 8.6(b) is characterized is beside the point. As we already noted, Yeransian concedes that Delaware law does not require attorney's

fees to be sought as damages at trial. And his allegation that the District Court entered a judgment in favor of the Holders seemingly admits that his claim for fees is collateral and ancillary to the merits of that judgment. *See Pub. Interest Rsch. Grp. of N.J., Inc. v. Windall*, 51 F.3d 1179, 1190 (3d Cir. 1995). Thus, under the plain text of Rule 54(d)(2), Yeransian was required to bring his claim for fees by motion.

Second, Yeransian urges that Delaware law would recognize that he has pleaded a cause of action for breach of contract and that he seeks damages. Assuming that is true, his argument addresses only whether the fees he seeks qualify as damages that must be proven at trial in *this* lawsuit—not whether he was exempt from Rule 54(d)(2)'s requirements in his prior consolidated actions.

Third, Yeransian contends that he was unable to meet the 14-day deadline because he was not entitled to fees under § 8.6(b) until the District Court confirmed the arbitration award. That reasoning ignores the District Court's determination that the 14-day period began to run from that order and not the earlier dismissal order. It also ignores Yeransian's own argument that the order confirming the award was a judgment in the Holders' favor that triggered his entitlement to fees. And it ignores that the order counts as a final judgment from which the time for seeking fees may run. *See Teamsters Loc. 177 v. UPS*, 966 F.3d 245, 248 (3d Cir. 2020).

Fourth, Yeransian asserts that he had to make a demand on Markel before Markel was obligated to reimburse him and that the District Court wrongly concluded that he was dilatory in making this demand. He does not explain, though, why his demand was timely

or why § 8.6(b)'s demand requirement excused him from Rule 54(d)(2)'s requirements.[1] We routinely decline to address "ill-developed" arguments. *Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.*, 877 F.3d 136, 145 (3d Cir. 2017). And without more, we do not find that these points warrant reversal.

* * * * *

Yeransian should have sought any fees and costs to which he claimed entitlement by motion under Rule 54(d)(2) in his prior litigation. By failing to do so, he shut the federal courthouse doors on himself.[2] For those reasons, we will AFFIRM the District Court's order dismissing Yeransian's complaint.

[1] To the extent Yeransian argues that it was impossible for him to timely move under Rule 54(d)(2) in the previous action because Section 8.6(b)'s demand requirement was a condition precedent that remained unsatisfied until after Rule 54(d)(2)'s window closed, we find that contention unpersuasive. Because the decision whether to demand payment rested entirely with Yeransian, he could readily have complied with both Section 8.6(b)'s conditions precedent and Rule 54(d)(2) by demanding payment from Markel after entry of final judgment, but before Rule 54(d)(2)'s deadline lapsed. Even if Yeransian needed more time to demand payment, he should have moved the District Court to extend Rule 54(d)(2)'s window. *See, e.g.*, *Mints v. Educ. Testing Serv.*, 99 F.3d 1253, 1260 (3d Cir. 1996).

[2] Whether Yeransian otherwise waived his claim to fees under the contract or in state court is not before us. We therefore do not resolve that issue, and our decision should not be construed to comment on that question. Because we affirm under Rule 54, we also do not reach the District Court's holding on res judicata.