AFFIRMED and Opinion Filed July 31, 2023

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-20-00798-CV

WRENN WOOTEN, Appellant
V.
THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, JIM ZARA, AND PATRICK MATTHEWS, Appellees

On Appeal from the 471st Judicial District Court
Collin County, Texas
Trial Court Cause No. 471-01871-2018

MEMORANDUM OPINION

Before Justices Partida-Kipness, Pedersen, III, and Nowell
Opinion by Justice Pedersen, III

In this appeal involving alleged misrepresentations of insurance coverage and benefits, appellant Wrenn Wooten complains of the trial court's granting summary judgments in favor of appellees, The Northwestern Mutual Life Insurance Company, Jim Zara, and Patrick Matthews. Wooten raises three issues on appeal. We affirm the trial court's judgments.

BACKGROUND

Wooten purchased seven Northwestern Mutual insurance policies. Three are disability income policies. Four are various whole-life policies. Wooten purchased and reviewed the last of the policies in December 2005.

More than a decade later, on April 17, 2018, Wooten filed this lawsuit against appellees.[1] He alleges Matthews and Zara were Northwestern Mutual employees and agents. He alleges Zara sold him the policies, misrepresented coverage and benefits, wrongfully advised him, and concealed misrepresentations. He alleges Zara and Matthews continued to make misrepresentations "and/or" material omissions about the policies.

Wooten bought the disability policies to provide income if he became disabled and unable to work in his present capacity of MRI radiologist. Wooten alleges Zara misrepresented that the policy would provide disability income even if he were able to work in another field. He alleges Zara repeated the misrepresentation and affirmed he did not need different policies. Wooten also alleges the disability policies were unsuitable because they did not contain a waiver-of-premium term, contrary to Zara's misrepresentations "and/or" omissions. He alleges a waiver-of-premium term would have allowed him to receive disability income without paying premiums. He

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[1] All appellees are collectively referred to as "appellees" unless the context otherwise requires.

asserts Northwestern Mutual's application form for disability insurance "enabled the fraud." Wooten has not filed a disability claim under the policies.

Wooten alleges he bought the life insurance policies based on Zara's misrepresentations. He alleges Zara misrepresented the policies would provide about $25,000 a month in tax-free income. He alleges Zara falsely represented the policies would enable him to retire by age sixty. He complains Zara "effectively concealed" actual benefits of the policies.

Wooten moved to Texas in 2008. He transitioned from Zara to Matthews, "a local Texas Northwestern Mutual advisor." He does not allege Matthews sold him a policy relevant here. He alleges Matthews failed to disclose "the disability policies were not occupation specific and that the life insurance policies were not suitable for retirement income as promised."

Wooten alleges Northwestern Mutual is vicariously liable for the conduct of Zara and Matthews.

The live petition alleges claims for fraud, negligent misrepresentation, breach of fiduciary duty, and violations of the Texas Insurance Code and the Texas Deceptive Trade Practices-Consumer Protection Act (DTPA).

Wooten alleges "his claims are not barred by the applicable statute of limitations under the discovery rule." He alleges he did not discover the injury "and/or" misconduct that forms the basis of this lawsuit until within two years of his

filing the lawsuit. He asserts he filed his claims within a reasonable time after discovering his injury.

Appellees filed motions for summary judgment. Northwestern Mutual moved for traditional summary judgment on grounds that (1) limitations barred all claims, (2) Wooten could not show justifiable or reasonable reliance—elements of his claims for fraud, negligent misrepresentations, and violations of the Texas Insurance Code and the DTPA, (3) Zara and Matthews did not owe Wooten a fiduciary duty and even if they did Northwestern Mutual could not be vicariously liable for the alleged breach, and (4) Northwestern Mutual could not be vicariously liable for Matthews's conduct because he did not sell the policies and owed no duty to explain the policies. Zara and Matthews jointly filed a traditional and a no-evidence motion for summary judgment. In their traditional motion they argued (1) limitations barred all claims, (2) Wooten's claims for fraud, negligent misrepresentation, and violations of the Texas Insurance Code and DTPA failed due to lack of reasonable or justified reliance, (3) they did not owe Wooten a fiduciary duty, and (4) Matthews was not the soliciting agent for any of the policies and was not present at the sale of any of the policies. Zara and Matthews's no-evidence motion attacked all Wooten's claims.

The trial court granted Northwestern Mutual's traditional motion for summary judgment. It granted Zara and Matthews's traditional and no-evidence motions for summary judgment. The trial court did not state a ground upon which it granted the traditional motions. It denied, by written order, Wooten's motion for new trial.

Wooten filed a notice of appeal stating his intent to appeal the judgments.

SUMMARY JUDGMENT

Wooten contends, in part, the trial court erred by granting appellees' traditional motions for summary judgment on the ground of the statute of limitations.[2] We disagree.

In a traditional summary judgment, the movant has the burden of showing no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *See* TEX. R. CIV. P. 166a(c). In deciding whether a disputed material fact issue exists precluding summary judgment, evidence favorable to the nonmovant will be taken as true. *See In re Estate of Berry*, 280 S.W.3d 478, 480 (Tex. App.—Dallas 2009, no pet.). Every reasonable inference must be indulged in favor of the nonmovant and any doubts resolved in its favor. *See City of Keller v. Wilson,* 168 S.W.3d 802, 824 (Tex. 2005). We review a summary judgment de novo to determine whether a right to prevail is established as a matter of law. *See Dickey v. Club Corp. of Am.*, 12 S.W.3d 172, 175 (Tex. App.—Dallas 2000, pet. denied).

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[2] Wooten brings three issues on appeal:

(1) Whether the trial court erred in granting Northwestern Mutual's traditional motion for summary judgment.

(2) Whether the trial court erred in granting Zara and Matthews' traditional motion for summary judgment.

(3) Whether the trial court erred in granting Zara and Matthews' no-evidence motion for summary judgment.

A defendant seeking summary judgment based on an affirmative defense must conclusively prove every element of the defense. *See Inman v. Loe*, No. 05-18-00130-CV, 2019 WL 698089, at *3 (Tex. App.—Dallas Feb. 20, 2019, pet. denied) (mem. op.) (citing *Swilley v. Hughes*, 488 S.W.2d 64, 67 (Tex. 1972)). "A matter is conclusively established if ordinary minds could not differ as to the conclusion to be drawn from the evidence." *Id.* "A summary judgment movant on limitations bears the burden to '(1) conclusively prove when the cause of action accrued and (2) negate the discovery rule, if it applies and has been pleaded or otherwise raised, by proving as a matter of law that there is no genuine issue of material fact about when the plaintiff discovered, or in the exercise of reasonable diligence should have discovered the nature of its injury.'" *Id.* (quoting *Equitable Recovery, L.P. v. Heath Ins. Brokers of Tex., L.P.*, 235 S.W.3d 376, 385 (Tex. App.—Dallas 2007, pet. dism'd) (quoting *KPMG Peat Marwick v. Harrison Cnty. Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex. 1999)). If the movant establishes that the statute of limitations bars the action, the nonmovant must then adduce summary judgment proof raising a fact issue in avoidance of the statute of limitations. *See KPMG Peat Marwick*, 988 S.W.2d at 748.

STATUTE OF LIMITATIONS

The purpose of a statute of limitations is to establish a point of repose and to terminate stale claims. *See Murray v. San Jacinto Agency, Inc.*, 800 S.W.2d 826, 828 (Tex. 1990). A cause of action generally accrues when a party has been injured by

another's acts or omissions. *See id*. (also stating, "A cause of action can generally be said to accrue at the time when facts come into existence which authorize a claimant to seek a judicial remedy."); *see also Exxon Corp. v. Emerald Oil & Gas Co., L.C.*, 348 S.W.3d 194, 202 (Tex. 2011) (same). Under the legal injury rule, a cause of action accrues when a wrongful act causes some legal injury, even if the fact of injury is not discovered until later, and even if all resulting damages have not yet occurred. *See Murphy v. Campbell*, 964 S.W.3d 265, 270 (Tex. 1997). Determining the accrual date of a cause of action is a question of law. *See Etan Indus., Inc. v. Lehmann*, 359 S.W.3d 620, 623 (Tex. 2011).

Wooten alleged causes of action with two- and four-year periods of limitation. The statute of limitations for Wooten's claims for negligent misrepresentation and for violation of the Texas Insurance Code and the DTPA is two years. *See* TEX. INS. CODE ANN. § 541.162(a) ("A person must bring an action under this chapter before the second anniversary of ... (1) the date the unfair method of competition or unfair or deceptive act or practice occurred; or (2) the date the person discovered or, by the exercise of reasonable diligence, should have discovered that the unfair method of competition or unfair or deceptive act or practice occurred."); TEX. BUS. & COM. CODE ANN. § 17.565 ("All actions brought under this subchapter must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of

the false, misleading, or deceptive act or practice."); TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a) (negligent misrepresentation); *Rangel v. Progressive Cnty. Mut. Ins. Co.*, 333 S.W.3d 265, 268 (Tex. App.—El Paso 2010, pet. denied) (two-year limitations applied to insurance code, DTPA, and negligent misrepresentation). The limitations period for fraud is four years. *See* CIV. PRAC. & REM. §16.004(a)(4). The limitations period for breach of fiduciary duty is four years. *See id.* § 16.004(a)(5); *TRO-X, L.P. v. Eagle Oil & Gas Co.*, 608 S.W.3d 1, 18 (Tex. App.—Dallas 2018, pet. denied), *aff'd,* 619 S.W.3d 699 (Tex. 2021); *Inman*, 2019 WL 698089, at *3 (this Court, noting a fiduciary breach claim generally accrues when the claimant knows or in the exercise of ordinary diligence should know of the wrongful act and resulting injury).

We conclude appellees carried their summary judgment burden of conclusively proving Wooten's claims for violations of the Insurance Code and DTPA, negligent misrepresentation, and fraud accrued at the time Wooten purchased each policy. *See Seger v. Branda,* No. 01-21-00224, 2022 WL 17981559, at *6 (Tex. App.—Houston [1st Dist.] Dec. 29, 2022, pet. filed) (mem. op.) ("[W]e conclude that Dr. Seger's claims of Insurance Code violations, negligent misrepresentation, and fraud accrued at the time he purchased his life insurance policy 'almost thirty years ago . . . in the early 1990s' when appellees made the alleged misrepresentations and omissions to induce him to purchase the policy."); *and see Franco v. Slavonic Mut. Fire Ins. Ass'n,* 154 S.W.3d 777, 789 (Tex. App.—Houston [14th Dist.] 2004,

no pet.) (holding insured's claims for misrepresentation, fraud, and violations of DTPA and Texas Insurance Code stemming from alleged misrepresentations the insurer made when the policy was sold accrued at that time); *Mauskar v. Hardgrove*, No. 14-02-00756-CV, 2003 WL 2103464, at *3 (Tex. App.—Houston [14th Dist.] June 19, 2003, no pet.) (mem. op.) (holding insured's claims against insurers and insurance agent for fraud, negligent misrepresentation, and violations of the Insurance Code and DTPA based on agents' alleged misrepresentations that policies would pay two to three times face value when insured reached age sixty-five and that insured would not be required to pay premiums beyond age sixty-five accrued at time insured purchased policies and were time barred); *Rangel*, 333 S.W.3d at 269 (plaintiffs' claim against insurer for negligent misrepresentation and violations of the DTPA and the Texas Insurance code based on alleged misrepresentation of policy's coverage accrued on date insured purchased policy)). Moreover, we conclude Wooten's claim for breach of fiduciary duty accrued when he purchased his insurance policies. *See Marcus & Millichap Real Est. Inv. Servs. of Nev., Inc. v. Triex Tex. Holdings, LLC*, 659 S.W.3d 456, 461 (Tex. 2023) (per curiam) (claim for breach of fiduciary duty based on false and misleading statements and on suppressed and misrepresented information accrued at time of transaction).

An insured has a duty to read the policy, and failing to do so, is charged with knowledge of the policy's terms and conditions.[3] *See Mauskar*, 2003 WL 21403464, at *4 (stating proposition and stating, "Mauskar should have discovered the terms of the policies were not as allegedly promised by reading the policies or descriptions of the policies at the time they were issued . . . ."). When the insured receives the written policy, it has sufficient facts in its possession to seek a legal remedy based on an alleged misrepresentation about policy terms by the insurer. *See id.* ("By reading the policies at the time they were issued, Mauskar could have discovered the alleged misrepresentations regarding the terms of the policies sufficient to put him on notice of his causes of action.").

Appellees conclusively demonstrated Wooten purchased his last Northwestern Mutual policy in December 2005. The longest applicable statute of limitations for his claims on that policy—and all his policies—is four years, as addressed above. Wooten filed this lawsuit on April 17, 2018. Consequently, Wooten's claims for fraud, negligent misrepresentation, breach of fiduciary duty, and violations of the Texas Insurance Code and the DTPA are barred by limitations—unless Wooten was otherwise authorized to subsequently file his lawsuit and timely did so.

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[3] Wooten testified at deposition he received a copy of each Northwestern Mutual policy he purchased. He testified he reviewed the policies at or about the time he received them.

The Discovery Rule

Wooten argues the discovery rule delayed accrual of his claims and that he timely filed his lawsuit. Wooten hired Tony De Bruyne to review the policies. De Bruyne informed Wooten he was not properly insured. Wooten argues De Bruyne reached his conclusions "in or about 2016." He asserts he timely filed this lawsuit on April 17, 2018, within two years of when he discovered, through De Bruyne, appellees' alleged misconduct.

"A cause of action generally accrues, and the statute of limitations begins to run, when facts come into existence that authorize a claimant to seek a judicial remedy." *Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 514 (Tex. 1998). If the discovery rule applies to a claim, "[t]he discovery rule delays accrual until the plaintiff 'knew or in the exercise of reasonable diligence should have known of the wrongful act and resulting injury.'" *Schlumberger Tech. Corp. v. Pasko,* 544 S.W.3d 830, 834 (Tex. 2018) (quoting *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996)). The discovery rule is "a very limited exception to statutes of limitations," and is available only "when the nature of the plaintiff's injury is both inherently undiscoverable and objectively verifiable." *Wagner & Brown, Ltd. v. Horwood*, 58 S.W.3d 732, 734 (Tex. 2001). "These two elements attempt to strike a balance between the policy underlying statutes of limitations (barring stale claims) and the objective of avoiding an unjust result (barring claims that could not be brought

within the limitations period)." *Archer v. Tregellas*, 566 S.W.3d 281, 290 (Tex. 2018); *see S.V.*, 933 S.W.2d at 25 (noting application of discovery rule "should be few and narrowly drawn").

"An injury is not inherently undiscoverable when it is the type of injury that could be discovered through the exercise of reasonable diligence." *BP Am. Prod. Co. v. Marshall*, 342 S.W.3d 59, 66 (Tex. 2011). The application of the discovery rule is determined on a categorical basis—we determine whether the claim is based on the type of injury that "generally is discoverable by the exercise of reasonable diligence," without regard to whether a particular plaintiff discovered "his or her particular injury within the applicable limitations period." *Brown v. Arenson*, 571 S.W.3d 324, 333 (Tex. App.—Houston [1st Dist.] 2018, no pet.).

We address whether Wooten's injury is inherently undiscoverable. Wooten testified he reviewed each of the life insurance policies and disability insurance policies when they were delivered to him. The applications for *the variable life policies* contained the following disclaimer:

> **I UNDERSTAND THAT THE CASH VALUE OF THE VARIABLE WHOLE LIFE WITH ADDITIONAL PROTECTION POLICY APPLIED FOR MAY INCREASE OR DECREASE TO REFLECT THE INVESTMENT EXPERIENCE OF THE NORTHWESTERN MUTUAL VARIABLE LIFE ACCOUNT. THERE ARE NO GUARANTEED MINIMUM CASH VALUES.**

The disclaimer was on the signature page of the applications. It appears above Wooten's signature. Wooten testified he reviewed and read the disclaimer before

signing the applications. The following disclaimer appeared on the first page of each variable life insurance policy:

> **THE CASH VALUE UNDER THIS POLICY MAY INCREASE OR DECREASE DAILY DEPENDING ON INVESTMENT RESULTS. THERE IS NO GUARANTEED MINIMUM CASH VALUE.**

Wooten testified he reviewed the disclaimer. He testified Zara explained the disclaimer meant, "Mr. Zara had told me that, you know, the policy, you know, that the policy values might fluctuate." Additionally, annual policy statements for the variable life policies included the following disclaimer on the first page of each statement: "Invested assets are based on investment performance and are not guaranteed." Wooten testified there was "no doubt" he reviewed the annual policy statements after he received them.

Wooten testified he reviewed *the whole life insurance policies* when they were delivered to him. These policies provided a guaranteed cash value. For example, one stated a guaranteed cash value of $147,899 on October 6, 2023. The other policy stated a guaranteed cash value of $610,685 on November 6, 2023.

Wooten testified he reviewed *the disability insurance policies* when he received them. Wooten's three disability policies state: "The Insured is totally disabled when both unable to perform the principal duties of the regular occupation and not gainfully employed in any occupation."

As noted, Wooten alleges appellees misrepresented the disability policies provided coverage if he were unable to work as an MRI radiologist while supplementing his income by working in another field. He also wanted life insurance policies that would provide about $25,000 a month in tax-free income and enable him to retire at age sixty-five.

But policy provisions and other documentation addressed above demonstrate the policies did not provide the coverage or the payout appellees allegedly misrepresented. "His injury was not inherently undiscoverable because he easily could have discovered his injury by reading the policies." *Mauskar*, 2003 WL 21303464, at *4; *see Seger*, 2022 WL 17981559, at *7 (allegations that misrepresentations and omissions concerning how life insurance policy actually operated and the amount of premiums to be paid were not apparent from the terms of the policy and were not otherwise made apparent did not satisfy the "inherently undiscoverable" requirement.); *and see Arizpe v. Principal Life Ins. Co.*, 398 F. Supp. 3d 27, 60 (N.D. Tex. 2019) (injury not "inherently undiscoverable" because plaintiff could have learned of alleged misrepresentations by reading his policy). Moreover, summary judgment evidence conclusively demonstrates Wooten actually reviewed the policies. Wooten knew or should have known at the time he bought the policies—and when he reviewed the policies—that they did not provide the coverage or benefits appellees allegedly represented.

Consequently, appellees conclusively demonstrated in the trial court that the alleged injuries are not "inherently undiscoverable" and that the discovery rule does not apply.

We reject Wooten's related arguments that the discovery rule applies and that he timely filed his claims. Wooten asserts he "could not have discovered" the alleged misrepresentations and nondisclosures sooner due to Zara's and Matthews's active concealment. We have concluded the injuries were not inherently undiscoverable and that Wooten reviewed the policies.

Wooten asserts he did not understand the policy's language or coverage. A sister court rejected this argument. *See Mauskar*, 2003 WL 21403464, at *4 (concluding discovery rule did not apply despite insured's contention that "he did not understand either the terms of the policies or that the policies he purchased would not pay two to three times their face value.").

Wooten argues appellees were formal fiduciaries, and he relied on them. He asserts, "The discovery rule is especially applicable where defendant is a fiduciary." Wooten's cited-to judicial opinions addressing fiduciaries fail to support his argument. *See Reich v. Lancaster*, 55 F.3d 1034, 1053 (5th Cir. 2003) (addressing alleged breaches of fiduciary duties imposed by 29 U.S.C. § 1104 and transactions prohibited by § 29 U.S.C. § 1106 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001–1461, *see Reich*, 55 F.3d at 1040, not applicable here); *Envt. Procedures, Inc. v. Guidry*, 282 S.W.3d 602, 628 (Tex. App.—Houston [14th

Dist.] pet. denied) ("[W]e decline to extend the set of formal fiduciary relationship to encompass the relationship of an insurance agent, agency, or broker to a client."). *See also Mauskar*, 2003 WL 21403464, at *6 ("We know of no authority imposing a fiduciary relationship as a matter of law between an insured and his insurer or its agent; therefore, Mauskar must establish an informal fiduciary or confidential relationship.").

Moreover, assuming—without deciding—a fiduciary relationship, Wooten's fiduciary argument fails. The supreme court recently reiterated that "those owed a fiduciary duty are not altogether absolved of the usual obligation to use reasonable diligence to discover an injury." *Marcus & Millichap,* 659 S.W.3d at 462 (quoting *Berry v. Berry,* 646 S.W.3d 516, 526 (Tex. 2022)). Recognizing the presence of a fiduciary relationship can affect application of the discovery rule, but it remains the case that a person owed a fiduciary duty has some responsibility to ascertain when an injury occurs. *See id.* When the fact of misconduct becomes apparent it can no longer be ignored, regardless of the nature of the relationship. *See id.*; *Dunmore v. Chicago Title Ins. Co.,* 400 S.W.3d 635, 642 (Tex. App.—Dallas 2013, no pet.) ("In other words, even in a breach of fiduciary duty case where a fiduciary's misconduct is inherently undiscoverable, a breach of fiduciary duty claim accrues when the claimant knows or in the exercise of ordinary diligence should know of the wrongful act and resulting injury."). We have concluded that by 2005, at the latest, Wooten

"knew, or exercising reasonable diligence, should have known of the facts giving rise to the cause of action." *Marcus & Millichap,* 659 S.W.3d at 462.

Wooten similarly asserts appellees were informal fiduciaries, and he relied on them. In *Guidry,* cited-to by Wooten, the court of appeals refused to find an informal fiduciary relationship. *Guidry*, 282 S.W.3d at 628 ("[W]e conclude that the evidence would not permit reasonable and fair-minded people to conclude that a confidential relationship existed between the Insureds and Brokers *prior to* the transactions which are the subject of the Insureds' claims.") (emphasis added). We reach the same conclusion here. *See Seger*, 2022 WL 17981559, at *8 (To impose an informal fiduciary duty when a business transaction is involved, "the special relationship of trust and confidence must exist prior to, and apart from, the agreement made the basis of the suit . . ." Mere subjective trust, even where the parties have a longstanding relationship, is not sufficient to create an informal fiduciary duty). Wooten maintains Zara initially approached him to sell insurance policies. Wooten's additional evidence of a long-standing business relationship with appellees is not evidence of an informal fiduciary relationship of trust and confidence. *See Seger,* 2022 WL 1781559, at *8 (rejecting alleged informal fiduciary relationship due to "a personal relationship of trust and confidence dating from their high school days," "Branda was associated in his business with Dr. Seger's father," and "Dr. Seger's father was Branda's professional mentor . . . and their joint firm bore both of their names."); *and see Meyer v. Cathey*, 167 S.W.3d 327, 331 (Tex. 2005) (concluding

evidence that plaintiff trusted his business associate and that they were friends and frequent dining partners for four years did not transform business arrangement into fiduciary relationship); *Crim Truck & Tractor Co. v. Navistar Int'l Transp. Corp.*, 823 S.W.2d 591, 595 (Tex. 1992) ([T]he fact that the relationship has been a cordial one, of long duration, [is not] evidence of a confidential relationship."), *superseded by statute on other grounds by statute now repealed*, TEX. REV. CIV. STAT. art. 4413(36), § 6.06(e); *Mauskar*, 2003 WL 21403464, at *6 (declining to find confidential relationship where insured asserted he had known insurance agents for many years, had repeated business transactions with them, and had placed high degree of trust in them as his financial advisors).

Wooten argues the discovery rule applies to his statutory claims because it is codified in the limitation provisions of the Texas Insurance Code and the DTPA. *See* INS. § 541.162(a) (quoted above); BUS. & COM. § 17.565 (quoted above). He argues the statutes do not require the alleged injury to be inherently undiscoverable for the statutory discovery rules to apply. Nonetheless, we concluded above Wooten "discovered" or by "the exercise of due diligence, should have discovered," the alleged misrepresentations and nondisclosures when he received and reviewed the policies in 2005. *See* INS. § 541.162(a); BUS. & COM. § 17.565.

Wooten asserts his alleged reliance on Zara and Matthews was reasonable and extended the time in which to discover his injury. The argument improperly assumes Wooten's injury was "inherently undiscoverable" and that the discovery rule applies

here. Moreover, an insurance agent has no duty to explain policy terms to an insured. *See, e.g.*, *Mauskar*, 2003 WL 21403464, at *4 (injury was not "inherently undiscoverable" when agents allegedly failed to disclose policies would not have promised payoff, plaintiff allegedly did not understand policies, and policies contradicted the alleged misrepresentations). Instead, an insured has a duty to read the policy, and failing to do so, is charged with knowledge of the policy terms and conditions). *See id.* ("Mauskar should have discovered the terms of the policies were not as allegedly promised by reading the policies or descriptions of the policies at the time they were issued . . . ."). Additionally, Wooten's cited-to legal opinions do not support his argument. *See Colonial Sav. Ass'n v. Taylor*, 544 S.W.2d 116, 119 (Tex. 1976) (no discussion of statute of limitations); *Ins. Network of Tex. v. Klossel*, 266 S.W.3d 456, 480 (Tex. App.—Corpus Christi-Edinberg 2008, pet. denied) (same). Moreover, the record is conclusive that Wooten reviewed the policies—which contained information contradictory to the alleged misrepresentations—soon after receiving them.

Wooten asserts *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 644-45 (2010) requires actual discovery of "scienter." *Merck & Co.* is inapposite. It addresses a federal statute of limitations—28 U.S.C. § 1658(b)—in an action for securities fraud under § 10(b) of the federal Securities Exchange Act of 1934. *See id.* at 638. Wooten cites to no Texas judicial opinion citing the provisions of § 10(b), its statute of

limitations, or *Merck & Co.* in addressing the Texas discovery rule in cases comparable to this case.

We conclude appellees carried their summary judgment burden to conclusively prove Wooten's last claim accrued in December 2005 and to negate applicability of the common-law discovery rule to his common-law claims of fraud, negligent misrepresentation, and breach of fiduciary duty. Moreover, we conclude appellees conclusively demonstrated the statutory discovery rules codified in the Texas Insurance Code and the DTPA do not operate to make Wooten's claims timely filed in 2018.

We overrule Wooten's first and second appellate issues challenging the judgments based on appellees' traditional summary judgment motions.[4]

CONCLUSION

We affirm the trial court's judgments.

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/Bill Pedersen, III/
BILL PEDERSEN, III
JUSTICE

[4] Consequently, we need not and do not address Wooten's third appellate issue attacking the joint no-evidence motion for summary judgment of Zara and Matthews.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

WRENN WOOTEN, Appellant No. 05-20-00798-CV V. THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, JIM ZARA, AND PATRICK MATTHEWS, Appellees	On Appeal from the 471st Judicial District Court, Collin County, Texas Trial Court Cause No. 471-01871-2018. Opinion delivered by Justice Pedersen, III. Justices Partida-Kipness and Nowell participating.

In accordance with this Court's opinion of this date, the judgments of the trial court are **AFFIRMED**.

It is **ORDERED** that appellees THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, JIM ZARA, AND PATRICK MATTHEWS recover their costs of this appeal from appellant WRENN WOOTEN.

Judgment entered this 31st day of July, 2023.