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Indiana Court of Appeals: Residential Insurance Policy Requiring Claim Against Insurer be Filed in Under 2 Years is Void

This past week the Indiana Court of Appeals handed down an important decision and major victory for the rights of residential property owners. The case, *State Farm Fire and Casualty Co. v. Riddell National Bank*, held that where an insurance policy covering residential property in Indiana requires that an action against the insurer must be brought in a time period of less than two years after the date of loss, the provision providing the limitation is void. The court further, and more importantly, held that the applicable limitation in such a situation is not the two-year period that could have been agreed upon, but rather the full ten-year period to bring a claim for breach of contract under Indiana law.

Typically our weekly discussions do not require a discussion of the specific facts of the case(s) that we address. While that is, in theory, true here as well, the facts are very helpful to understand the decision of the court and to see why it is such an important decision. The genesis of the case stems from a mortgage on a piece of property in Parke County, Indiana – the "covered bridge capital of the world." Riddell National Bank, the plaintiff in the case, held a mortgage on the property. As a condition of the mortgage, the homeowner had to have fire, flood,

earthquake, and other hazards insurance for the property. The homeowner had such an insurance policy with State Farm Fire and Casualty Company.

In August 2008, the homeowner abandoned the property without informing Riddell National Bank. In early 2009, the homeowner filed for bankruptcy protection. Instead of losing the property to the bank under a foreclosure, the homeowner executed a deed in lieu of foreclosure and transferred the property to Riddell National Bank. The deed was received in November 2009. Earlier, "in June 2009 [Riddell National Bank] discovered damage to the residence, including water damage, mold, collapsed plaster ceilings, buckled floors, and deterioration of carpet, walls, ceilings, doors and windows." After receiving the deed, in December 2009, Riddell National Bank informed State Farm that it intended to file a claim for the damages. State Farm denied the claim. Almost two years later, in September 2011, Riddell National Bank filed their lawsuit against State Farm.

As a small matter for discussion, in Indiana it is relatively rare to be able to sue an insurance company directly in a case. For example, in the typical auto accident case it is an insurance company who supplies the defense and will ultimately pay the judgment – at least up to policy limits – but the defendant cannot be the insurance company itself. The reason that State Farm is the actual defendant in this case is because Riddell National Bank held an enforceable interest in the insurance policy on the property. This made it a "first party" claim which can be brought directly against an insurance company.

When the case reached the trial court, State Farm moved to dismiss the case by alleging that the claim had been untimely filed. The basis for State Farm's motion was that the policy provided:

> SECTION I – CONDITIONS
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> 6. Suit Against Us. No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.

Under the express terms of this provision, a claim such as Riddell National Bank's must have been filed within one year of the date of loss. While the specific date of loss may have been quite difficult to put a finger on, what can be certain is that it had occurred on or before June 2009. Thus, the lawsuit that was filed in September 2011 was most certainly more than a year after the date of loss. The trial judge denied State Farm's motion. State Farm appealed, and the Court of Appeals decision is the one that we now discuss.

While it may appear on its face that the trial judge's decision was peculiar, given the explicit language of the insurance policy, there is an additional wrinkle that gives rise to the case. That wrinkle is Indiana Code section 27-1-13-17, which states:

> (a) This section applies to a policy of insurance that:
> (1) covers first party loss to property located in Indiana; and
> (2) insures against loss or damage to:
> (A) real property consisting of not more than four (4) residential units, one (1) of which is the principal place of residence of the named insured; or
> (B) personal property in which the named insured has an insurable interest and that is used within a residential dwelling for personal, family, or household purposes.
> (b) A policy of insurance described in subsection (a) may not be issued, renewed, or delivered to any person in Indiana if the policy limits a policyholder's right to bring an action against an insurer to a period of less than two (2) years from the date of loss.

Put simply, this provision of the Indiana Code specifically barred the use of a provision in an insurance policy for residential property to limit the time period for filing a lawsuit to under two years. Since the limitation period in the State Farm policy was only one year, on its face, it violated this statute.

To that end, it was not hard for the Court of Appeals or for the trial judge to state that the limitation provision in the insurance policy was void because it violated Indiana law. Indeed, State Farm admitted as much on appeal. The difficulty arose in determining what limitation, if any, applies. State Farm argued that because the two parties had clearly shown intent to limit time period for bringing a claim, the applicable limit should be the two years that they could have lawfully agreed upon.

Mind you, if State Farm's two-year argument were to carry the day, then Riddell National Bank's claim would be barred as it was filed in September 2011, which is more than two years from the June 2009 discovery of the damage to the property. Riddell National Bank argued that because the limitation provision was completely void, there was no limitation provided by the terms of the contract – *id est*, the insurance policy. Thus, Riddell National Bank argued, the only limitation was the ten-year statute of limitation for breach of contract actions provided by Indiana Code section 34-11-2-11. Technically, Riddell National Bank actually argued that the applicable period was the six-year period provided by section 34-11-2-9 which applies to actions for promissory notes, bills of exchange and written

contracts for the payment of money. Despite Riddell National Bank's erroneous citation, the proper statute would be the ten-year period of section 34-11-2-11.

In resolving which position was correct, the Court of Appeals looked to another provision of the insurance policy.

> SECTION I AND SECTION II – CONDITIONS
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> 10. Conformity to State Law. When a policy provision is in conflict with the applicable law of the State in which this policy is issued, the law of the State will apply.

Certainly, the policy provision was in conflict with Indiana law. Thus, Indiana law applied. The court looked to the law of contract and statutory interpretation. The court noted that when the language of either a contract or a statute is unambiguous, then the court must give the terms their ordinary and plain meaning and then apply each as it is written.

Here, the court found, that the insurance policy was unambiguous. The language of the provision clearly provided that the claim must be brought within one year. The court also found that the language of section 27-1-13-17 was unambiguous, in that it "provides that such a time requirement in an insurance policy is unenforceable." The statute does not, however, state that in lieu of an unenforceable provision, the two-year period shall supplant the void provision. Thus, in applying unambiguous terms of both the statute and the policy, the court was left with the inescapable conclusion that there is (1) no limitation in the policy and (2) that nothing imparts the two-year limitation into the insurance policy. Thus, the court applied the default time period, which is the ten-year statute of limitation for bringing a breach of contract action in Indiana.

Interestingly, the court addressed State Farm's argument by dissecting it into two distinct arguments. Perhaps this was the structure utilized by State Farm in its brief. The first argument was that in lie of the void provision, the court must apply the default rule of the state. The court agreed with this portion of the argument. However, State Farm argued that the default rule was the two-year period of section 27-1-13-17, and the court found that to be incorrect.

The second argument was that because prior to 2007, when section 27-1-13-17 was adopted, insurance policies could limit the time for filing suit to one year, the parties provided a clear intent to apply the shortest possible time period permitted under the law. The court dispensed with this argument by noting that the effective date of section 27-1-13-17 was July 1, 2007. Thus, any policy entered

into after that date was subject to the two-year requirements. Since this specific policy was enacted in 2008 and renewed in 2009, State Farm's argument did not hold water.

Join us again next time for further discussion of developments in the law.

Sources

- *State Farm Fire and Cas. Co. v. Riddell Nat'l Bank*, ___ N.E.2d ___, No. 61A01-1204-PL-159 (Ind. Ct. App. Feb. 20, 2013).
- Ind. Code § 27-1-13-17.
- Ind. Code § 34-11-2-9.
- Ind. Code § 34-11-2-11.