Court of Appeal Reaffirms Need for Insurers to Notify Insureds of Contractual Limitation Periods and to Re-Check the Insured's Application Statements

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California Insurance Code of Regulations, specifically 10 CCR § 2695.4, requires that an insurer notify its insureds of any contractual time limitation after the insured or beneficiary submits his or her claim. In the California Court of Appeal's January 21, 2010 decision in Superior Dispatch v. Insurance Corporation of New York, the court found the failure to provide the notice required by § 2695.4 results in the insurer's inability to rely on the contractual limitation provision in precluding litigation.

In legal parlance, the appellate court found that the insurer was "equitably estopped" from benefiting from the contractual limitation provision. Being "estopped" from doing something is the same as being barred or blocked from doing something. When someone or an entity is equitably estopped from doing something, they are being barred or blocked from doing something based upon traditional notions of fairness or justice.

Based on prior precedents, the court held that enforcing compliance with § 2695.4 in a way to negate the contractual limitation provision (despite how conspicuous the term was in the policy) was needed to "remedy the trap for the unwary." This is especially troubling for insurers who are not intending to "trap" anyone, but expect that the policy will be enforced as a contract between the insurer and the insured (*i.e.*, an insurer who expects the terms of policies that were agreed to by both parties to be enforced). Thus a warning to insurers is necessary: Just because the insured agrees to a term by purchasing the policy and has the opportunity to read the entire policy, the insurer cannot expect that all the terms will be enforced by California courts. In this case, the insurer must go beyond what is required in the policy and provide specific notice of the provision in the policy, despite the insured's ability to read it for himself. The court went further in holding that the insurer needs to still provide notice of the contractual limitation even when the insurer knows that the insured is represented by counsel.

In short, the court – in apparent antipathy for contractual limitation periods – sought to ensure that the insured is well-aware that he may be precluded from litigation if he sits on his right to bring suit. And, as such, the insurer needs to be especially diligent in providing notice to the insured if the insurer wants to benefit from the contractual limitation period later.

While the opinion reads as a surefire loss for the insurer, the Superior Dispatch appellate court ultimately found in favor of the insurer on a ground that was not even discussed in the trial court's opinion. Apparently, the insured (a trucking company) noted in its application for insurance that it would only be carrying textiles, food and drink, and paper products. The court, rightfully, found that the insured had made a material misrepresentation in its application when the accident for which coverage was sought resulted from the trucking company carrying automobiles on its trucks. The court deemed this error as material because the insurer submitted uncontradicted evidence that a trucking company carrying automobiles should have been charged a higher premium than a food delivery trucking company. As such, the court concluded that the misrepresentation in the application rendered the policy invalid – and therefore no cause of action for breach of contract or bad faith could be maintained.

The Superior Dispatch case is instructive on two issues. First, no matter how sure an insurer is that a contractual limitation period is going to be read by the insured in the policy (by way of numbered heading, bold-face type, or flashing lights), an insurer must always advise the insured of the time in which to bring suit in the initial denial letter – as the insured still might sit on (or

forget about) his or her right to sue. And second, even when all is thought lost, an insurer needs to re-examine the insured's application for falsities – as California courts will routinely rescind policies when misrepresentations were made, typically providing complete absolution for the insurer.