SANDBERG PHOENIX

BAD FAITH BLOG

Homeowner's Beware: Read Your Insurance Contract or Lose

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Jack and Carolyn Brockway filed suit against Allstate after it denied coverage for losses plaintiffs suffered after a theft at their home. The plaintiffs filed claims immediately following the theft which Allstate denied more than two years later. The plaintiffs sought damages for breach of contract and for breach of the implied covenant of good faith and fair dealing. In response, Allstate moved for summary judgment, arguing that a two year suit limitation provision contained in the insurance contract barred the plaintiffs' action. The trial court granted the motion for summary judgment which was affirmed on appeal.

Brockway v. Allstate Property and Casualty Insurance Company

In September 2009, the plaintiffs realized that a hole had been cut in their fence, and property stolen from their yard. They reported this theft to the police and contacted their Allstate agent, alerting him of the theft. Following that contact, in the summer of 2010, the plaintiffs discovered even more property stolen from their backyard, including items from their boat and travel trailer. Again, they notified their Allstate agent of the 2010 theft.

In response to the plaintiffs' claims, an Allstate investigator had a telephone conference with the plaintiffs regarding the items plaintiffs claimed had been stolen. Allstate then sent a letter to the plaintiffs requiring plaintiffs to provide a sworn proof of loss, accompanied with documentation that supported their ownership of the stolen items. The plaintiffs complied, and Allstate made additional requests for documentation and information, maintaining it was still investigating the incident. The investigation continued until February 2012, when Allstate formally denied the plaintiffs' claim on the grounds that the plaintiffs had made material misrepresentations throughout the investigation and had failed to cooperate.

In the initial contact between Allstate and the plaintiffs, the Allstate agent made no mention of any policy limitation requiring the plaintiffs to file suit within two years. However, at later points during investigation, Allstate's documents repeatedly informed the plaintiffs that the policy gave them two years from the date of the loss to file a lawsuit. The plaintiffs did not file suit until September 5, 2012, approximately three years after the date of the initial theft.

In both the trial court and court of appeals, the plaintiffs contended their claim was not time barred. They first asserted that Allstate was equitably estopped from asserting the two year limitation. The court rejected that argument noting there was no evidence an "objectively reasonable juror could find an estoppel." Allstate made no misrepresentation regarding the suit limitations. Rather, it informed them of the provision. The also argued their bad faith claim came within the General Conditions, which stated in relevant part, "an action must be commenced within two years of the date the cause of action accrues, not two years from the inception of loss or damage." Based on that language, the plaintiffs argued that the claim for breach of the duty of good faith began accruing in February 2012, when Allstate denied their claim.

The plaintiffs centered their argument on the differences between the two provisions. The General Conditions provision was the default-suit limitation policy, and the Section I suit limitation provision was specifically limited to claims that related to the existence or the amount of the loss for which coverage was sought. The plaintiffs contended their claim did not relate to the existence, amount of coverage, or amount of loss. Rather, they argued it related to Allstate's conduct in processing and investigating the claim, which would fall under the General Conditions provision allowing their claim to begin accruing in February 2012. In response, Allstate argued the plaintiffs were not allowed to circumvent the Section I suit limitation, because it was the only one that has "any relevance in the matter." Thus, Allstate contended their claim would fail as a matter of law.

To support their position, the plaintiffs pointed out facts in the summary judgment record that would strengthen their argument that Allstate had acted in bad faith. They argued Allstate's conduct was contrary to their reasonable expectations. They had expected that Allstate would fairly evaluate and investigate the claim. Further, they argued that the summary judgment record demonstrated that "a jury could find that Allstate's conduct in taking more than 17-months to evaluate a simple property theft, requiring Examinations under Oath and production of documents past the limitation deadline and the issuance of a denial asserting misrepresentation and concealment well past the limitation deadline to be a breach of the duty of good faith and fair dealing." The plaintiffs asserted that the conduct of Allstate "reasonably induced" them not to earlier file any legal action.

The Court of Appeals reasoned that the plaintiffs' claim for breach of the duty of good faith "sounds in contract." Every contract contains an implied duty of good faith to prohibit improper behavior in the performance of the contracts. The implied duty is also intended to ensure the parties will refrain from acting in a way that would destroy or injure the right of another party who is set to benefit under the contract. Further, the Court stated that because the rights and duties of parties to an insurance party are contractual, the duties are limited to those that are derived from the policy.

In light of these legal principles, the Court of Appeals found there was no genuine issue of material fact with respect to the issue of good faith, and that Allstate was entitled to judgment as a matter of law. While the plaintiffs emphasized that Allstate failed to be clear in notifying them of the two year limitation, the provision was included in the contract, state statute, and pointed out by Allstate in its initial letter to the plaintiffs. Allstate had no duty to repeat the information that was set forth in the contracts; this would not be a reasonable expectation. The Court also noted that while Allstate had repeatedly informed the plaintiffs that the investigation was ongoing, it never claimed or inferred that the plaintiffs' claims would be accepted. Finally, the court noted there was *no evidence* that Allstate was *not investigating* the claims. Rather, there *was evidence* Allstate *continued to investigate* the claimed losses until it denied the claim.

This case shows that Oregon homeowners must read and heed the provisions in their insurance contract. That is particularly true when it becomes apparent the insured may have to file suit to prevail on the claim. Unlike some other states, the courts in Oregon will not impose an extra duty on the insurer to repeatedly inform the homeowner of any policy limitations on the claim. Rather, the homeowner is under a duty to read the contract, and seek clarification where there is uncertainty regarding the policy requirements.