

Court of Appeals Rejects Blue Shield's Attempt to Impose a Two-Year Statute of Limitations for Bad Faith

Myrna Kawakita was set to undergo gastric bypass surgery, and her health insurer, Blue Shield of California, initially authorized the procedure. However, rather than paying for the procedure, Blue Shield rescinded Kawakita's health insurance policy, asserting that her application contained misrepresentations about her height and weight.

Kawakita purchased her health insurance policy through Blue Shield's alleged agent, Steven Stendal, and claimed that Stendal was responsible for any misstatements on her application. Blue Shield rescinded Kawakita's policy in August 2006, and she filed her lawsuit in July 2009, asserting causes of action for breach of contract, tortious breach on the implied covenant of good faith and fair dealing and declaratory relief.

Blue Shield filed a motion for summary adjudication, arguing that the bad faith claim was barred by the two-year statute of limitations imposed by California Code of Civil Procedure [Section 339](#) and [Love v. Fire Insurance Exchange](#), 221 Cal. App. 3d 1136, 1144 n.4 (1990). The trial court rejected Blue Shield's motion, and with [Blue Shield of California Life & Health Insurance Company v. Superior Court \(Kawakita\)](#), No. B225632, Blue Shield sought a peremptory writ of mandate directing the trial court to reverse its order. While the California Court of Appeal did not agree with the trial court's reasoning, it did agree with the result and allowed Kawakita to proceed with her bad faith cause of action.

With its motion, Blue Shield anticipated that Kawakita might rely on California Insurance Code [Section 10350.11](#) to contend that the statute of limitations for a bad faith claim was actually three years. Relying primarily on federal court decisions, Blue Shield asserted that Section 10350.11 relates to contractual limitations tied to filing written proofs of loss and is unrelated to Code of Civil Procedure Section 339. The Court of Appeal explained that even if it accepted Blue Shield's interpretation of Insurance Code Section 10350.11, the argument was irrelevant because, as permitted by Insurance Code Section 10350, Blue Shield's policy actually contained language *extending* Kawakita's deadline to initiate a lawsuit until three years after the claim for benefits was first denied. Specifically, under the headline, "Commencement of Legal Action," the policy issued to Kawakita provided that "Any suit or action to recover benefits under this Plan ... or any other matter arising out of this Plan ... must be commenced no later than three years after the date the coverage for benefits in question was first denied."



Based on this provision, with its broad application to “any other matter arising out of the Plan,” the Court of Appeal ruled that Kawakita’s bad faith claim needed to be filed no later than three years after the coverage was first denied; which it was. With this ruling, Kawakita’s attempt to impose bad faith liability of Blue Shield’s decision to rescind her coverage case can proceed.



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