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## Superior Dispatch's Claim Dispatched Altogether, but Not Before Court Finds Duty to Notify

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**Insurers must notify policyholder claimants of any contractual limitations period contained in the policy *regardless* of whether the insured is represented by counsel. If the carrier fails to comply, it may be barred from relying upon the contractual limitation provision to deny the policyholder's claim.**

The California Court of Appeal's decision on January 21 in *Superior Dispatch, Inc. v. Insurance Corporation of New York*, Court of Appeal of California, Second Appellate District Case No. B204878, was a pointed one, however. Ultimately, the appellate court held that the policyholder – Superior Dispatch – had made a material misrepresentation on its insurance application, thereby voiding coverage altogether. Thus, while judgment in the carrier's favor easily could have been upheld on this ground, the Court went out of its way to find that the insurer's alternate ground for judgment – the one-year contractual limitations period – was insufficient because the carrier had failed to notify Superior Dispatch of the limitations period.

Superior Dispatch submitted a claim for damage it had caused to a dump truck while hauling it, and the carrier denied it. In subsequent correspondence between the parties' counsel, the insurer upheld its denial but never referred the insured or its counsel to the one-year contractual limitations provision in the policy at issue. Ultimately, Superior Dispatch sued, and the insurer filed a motion for summary judgment, arguing, *inter alia*, that the one-year contractual limitation provision barred the suit altogether. The trial court granted summary judgment for the carrier on the ground that the policy's one-year limitations period applied.

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The Court of Appeal found that summary judgment could not be granted on the one-year limitations period. The regulations promulgated by the California Department of Insurance include two provisions governing notice by an insurer of a contractual limitations provision. Under Title 10, Section 2695.4(a), the insurer must “disclose to a first party claimant or beneficiary, all benefits, coverage, time limits or other provisions of any insurance policy issued by that insurer that may apply to the claim presented by the claimant.” Under the second provision, Section 2695.7(f), “every insurer shall provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim.” Section 2695.7(f) expressly does not apply to a claimant represented by counsel.

Refusing to find the regulations in conflict, the Court of Appeal concluded that an insurer “can comply with both notice requirements with respect to contractual limitations provisions by timely providing written notice of those provisions.” The Court further concluded that the requirement applies even where (1) the insured is represented by counsel and (2) the limitations period is conspicuously located in the policy.

Notwithstanding the insurer’s failure to notify the insured of the one-year limitations period, the Court ultimately held that the insurer *was* entitled to summary judgment because the insured had made a material misrepresentation in its insurance application.

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