

An Insurer Has A Duty to Notify Insured of Contractual Limitations Provision Regardless of Whether the Insured is Represented By Counsel.

Regardless of whether the insured is represented by counsel, an insurer has a duty to provide notice of a contractual statute of limitations period. The Insurance Corporation of New York discovered this holding the hard way when the California Court of Appeal published *Superior Dispatch, Inc. v. Insurance Corp. of New York*, 181 Cal. App. 4th 175 (2010), *modified on Denial of Rehearing*, ___ Cal. App. 4th ___, 2010 WL 601459 (February 22, 2010).



Superior Dispatch (“Superior”) was a trucking company who obtained a Cargo Coverage insurance policy from the Insurance Corporation of New York (“Inscorp”). The policy issued to Superior contained a contractual statute of limitations period stating, “No suit or action or proceeding for the recovery of any claim under this policy shall be sustainable in any court of law or equity unless the same be commenced within twelve (12) months next after discovery by the Insured of the occurrence which gives rise to the claim.”

In July of 2003, Superior was hired to transport a dump truck on the back of a flat rack trailer. En route to its destination, the cab of the dump truck struck an overpass and was severely damaged. On July 17, 2003, Superior submitted a claim to Inscorp for the damaged dump truck. Inscorp denied the claim in a letter dated November 5, 2003. The denial letter did not notify Superior of the policy’s one-year contractual limitations period. In January 2004, Superior retained legal counsel who challenged the denial in a several letters to Inscorp. However, Inscorp affirmed the company’s decision to deny the claim arguing that there was no coverage under the policy. Once again, Inscorp’s letter did not notify Superior of the one-year contractual limitations period. When counsel for Superior finally filed a complaint on May 20, 2005, Inscorp filed a motion for summary judgment arguing that the contractual limitations period barred the complaint. The trial court agreed and entered a judgment in favor of Inscorp.

The California Court of Appeal reversed the lower court’s judgment holding that Inscorp was not entitled to summary judgment based on the contractual limitations provision. Here, the court noted that the fact that Superior retained counsel before the end of the limitations period did not establish as a matter of law that Superior’s reliance on the nondisclosure was unreasonable. Instead, the court held that the reasonableness of Superior’s reliance on Inscorp’s nondisclosure was a question of fact. While other cases preclude estoppel based on counsel’s knowledge of the law, in this case, the limitation period was contractual rather than statutory. Accordingly, a triable issue of fact remained as to the existence of an equitable estoppels claim. As a result, the Court of Appeal ruled that Inscorp was not entitled to summary judgment.

Although the trial court’s summary judgment was overturned, all was not lost for Inscorp. The appellate court ultimately held that Superior made a material misrepresentation on its insurance application by failing to

disclose that Superior transported motor vehicles. This misrepresentation, the court held, rendered the policy invalid and established a complete defense to the breach of contract and implied covenant claims.

This case should serve as an additional reminder that an insurer has a duty to notify the insured of a contractual limitations provision, regardless of whether or not the insured has retained legal counsel. Whenever a policy contains a contractual limitation provision, the insurer should provide notice of the provision in nearly all communications with the insured.



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