TRAUB LIEBERMAN

INSURANCE LAW BLOG

January 11, 2024

Illinois Court of Appeals Addresses Waiver and Estoppel in Context of Suit Limitation Provision in Property Policy

BY: James M. Eastham

In *Naperville Hotel Partners, LLC v. Liberty Mut. Fire Ins. Co.*, 2023 IL App (3d) 220440-U the Illinois Third District Court of Appeals addressed whether failure to include reference to a limitations provision in reservation of rights correspondence to an insured can be deemed a waiver of the provision or otherwise estop the insurer from relying on the provision.

The claim involved water damage sustained at the Insured's motel as a result of numerous rain events that occurred between 2015 and 2020. Liberty Mutual issued an insurance policy that covered several buildings including the subject hotel. The policy required that any legal action based on the coverage had to be brought "within two (2) years after the date on which the physical damage occurred, extended by the number of days between the date you submitted the statement of loss to us and the date we deny the claim in whole or in part."

Plaintiffs filed their claim with Liberty Mutual in May 2019. In June of 2019 Liberty Mutual sent a reservation of rights letter to the Insured which requested more information and listed the "immediate written notice of loss" provision as a potential basis for excluding coverage but did not list the two-year time-limitation on legal action. Liberty Mutual also did not mention the provision in subsequent communications with the Insured.

On March 4, 2020, Liberty Mutual informed the Insured that it was denying coverage in part because of the failure to comply with the policy's two-year time-limitation provision. Subsequent to the denial of coverage the Insured filed suit and the carrier moved to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2020)) citing, among other arguments, the two-year time-limitation provision.

In response to the motion Plaintiff contended that Liberty Mutual waived, and should be estopped from asserting, its two-year time-limitation provision because (1) it did not include the provision in its June 2019 reservation of rights letter, and (2) its actions during the pendency of the claim indicated its intent to waive the provision. In granting the carrier's motion to dismiss, the Court first noted that the Plaintiff failed to direct the court to any statute or regulation that requires an insurance company to include a limitations provision in a reservation of rights. The Court followed up by stating that it was aware of no such statute or regulation. The Court went on to distinguish the two cases relied on by the Insured. Per the Court, both of those cases involved reservation-of-rights letters in the context of the duty to defend and were therefore ultimately concerned with empowering an insured to intelligently choose between retaining her own counsel, or accepting defense counsel provided by the insurer. Finding no reason to extend the cases beyond the duty-to-defend context, the Court rejected Plaintiff's argument that Liberty Mutual was required to include the two-year time-limitation provision in its initial reservation of rights letter in June 2019.

© Traub Lieberman Straus & Shrewsberry LLP

The Court further found nothing in the record to support the claim that Liberty Mutual engaged in actions requiring it to be estopped from asserting the two-year time-limitation provision. Quoting from Foamcraft, Inc. v. First State Insurance Co., 238 Ill. App. 3d 791, 606 N.E.2d 537 (1992), the Court noted that "Cases in which an insurer's conduct is found to amount to estoppel typically involve a concession of liability by the insurer, advance payments by the insurer to the plaintiff in contemplation of eventual settlement, and statements by the insurer which encourage the plaintiff to delay filing his action." According to the Naperville Hotel Court, a review of Liberty Mutual's initial reservation of rights letter, as well as the other communications it had with its Insured, indicate that it never undertook any preclusive actions like the ones referenced in Foamcraft. Accordingly, the Court rejected the estoppel argument and upheld the grant of the motion to dismiss by the circuit court.

© Traub Lieberman Straus & Shrewsberry LLP