

Insurance Coverage Case Law Update

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Aaron v. Georgia Farm Bureau Mut. Ins. Co., A09A0354 (Ga. Ct. App. April 8, 2009)

The possibility of settling a disputed first-party insurance claim does not discharge the insured from his duty to file suit within the limitation period.

Plaintiff's home was struck by a vehicle. Plaintiff initially rejected his insurer's estimate of damages but then accepted the estimate more than one year after the date of loss. The insurer then denied the claim, citing the one-year contractual limitation of action clause. Plaintiff filed suit, and the trial court agreed that the insured's claims were barred by the policy's one-year contractual limitation period.

The Georgia Court of Appeals affirmed, holding that the possibility of a settlement did not discharge the insured of his duty to

file suit within the contractual limitation period. The court reasoned that settlement negotiation is not the type of conduct designed to lull the claimant into a false sense of security, estopping an insurer from asserting a suit limitation defense. To hold otherwise, the court noted, would allow a party to extend the statute of limitation by making an offer to settle.

Thorton v. Georgia Farm Bureau Mut. Ins. Co., A08A1801 (Ga. Ct. App. March 27, 2009)

In the absence of fraud inducing an insured not to file suit within a contractual limitation period, the acts of an insurance agent or adjuster do not waive a contractual limitation period.

Plaintiff's home was destroyed by fire. During the investigation, Plaintiff's insurer made several advanced payments to Plaintiff.

Each payment indicated that the insurer did not waive any provision of the policy. The claim was then denied four months before the expiration of the policy's one-year contractual limitation period. More than one year after the loss, the insured filed suit against his insurer, asserting that the insurer's actions prejudiced his ability to file suit within one year after the loss. The trial court granted summary judgment in the insurer's favor, based on the insured's failure to file suit within one year following the loss.

The Georgia Court of Appeals affirmed, holding that absent fraud on the part of the insurer which induces an insured to delay bringing suit until after the time for bringing suit has expired, the insured cannot rely on the agent's conduct as an excuse for the failure to sue.

Continued on page 26

State Farm Fire and Cas. Co. v. Walnut Avenue Partners, LLC; Big B Cleaners of Dalton, Inc. v. State Farm Fire and Cas. Co.; Walnut Avenue Partners, LLC v. State Farm Fire and Cas. Co., Nos. A08A2059, A08A2139, A08A2146 (Ga. Ct. App. March 16, 2009)

A policy's pollutants exclusion ("exclusion") does not exclude all property damage caused by pollutants if the policy provides an exception to the exclusion.

This case involved pollution resulting from the operation of a dry cleaning business. After being sued by the property owner, the dry cleaner sought a defense from its insurer. The insurer refused to provide a defense, asserting that the policy eliminated any pollution coverage. The policy excluded "property damage . . . arising out of the actual, alleged or threatened discharge, seepage, migration, dispersal, spill, release or escape of pollutants . . . [and] any . . . property damage arising out the actual, alleged or threatened discharge, seepage, migration, dispersal, spill, release or escape of pollutants." However, the policy also provided an exception to the exclusion for "pollutants which occur . . . quickly and abruptly and [are] accidental."

The Georgia Court of Appeals held that the insurer's interpretation of the policy rendered the exception for quick, abrupt, and accidental discharge of pollutants meaningless. Further, the court held that applying the "quick, abrupt and accidental" exception to the exclusion does not render the pollutant exclusion meaningless, because the exclusion still excludes a category of damages arising out of the discharge of pollutants.

Rentrite, Inc. v. Sentry Select Ins. Co., 293 Ga. App. 643 (2008)

The Georgia Court of Appeals rejected an insurer's interpretation of a policy exclusion and allowed a bad-faith claim to proceed.

A business policy excluded coverage for a false pretense loss where the insured has failed to obtain the customer's business address, phone number, and driver's license number, or where the customer has provided false information on a credit application. The insured, a rental equipment company, leased three pieces of equipment to a customer, who later converted the equipment. The insured filed a claim with his insurer, seeking reimbursement for the stolen equipment. The insured had failed to obtain the customer's driver's license number before renting the first piece of equipment but had obtained it before renting the next two pieces. The insurer denied coverage for all three transactions, asserting that the claims were excluded because the insured had failed to obtain a copy of the customer's driver's license or a credit application. The trial court granted summary judgment to the insurer.

The court of appeals reversed the holding on the second and third transactions, holding that the trial court had interpreted the policy exclusion too broadly. The court rejected the trial court's interpretation of the exclusion, holding that the clause could not be interpreted broadly to require that the insured obtain a copy of the customer's driver's license or credit report. Because Plaintiff had obtained the customer's driver's license number for the second and third rentals, the exclusion did not bar coverage for those claims. Because the exclusion did not support the insurer's position, the court reversed the summary judgment which had been granted to the insurer regarding the insured's claim for bad faith as to the second and third transactions.

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