

Tenth Circuit Rules That Equitable Contribution Claim Is Governed By Statute Of Limitations For Contract, Not Equity, Claims

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The Tenth Circuit ruled that an insurer's complaint against another insurer, alleging equitable contribution, was governed by Utah's six-year statute of limitations for claims based on written instruments, rather than the four-year statute of limitations for claims sounding in equity. *Maryland Cas. Co. v. Mid-Continent Cas. Co.*, 2018 WL 1388515 (10th Cir. Mar. 20, 2018).

When Red Point was sued for defective design and construction of a condominium, it sought general liability coverage from Maryland Casualty and Mid-Continental. Maryland Casualty defended Red Point, while Mid-Continent refused on the basis of several policy exclusions. The underlying suit was ultimately settled and Red Point assigned to Maryland Casualty any claims it had against Mid-Continent. Thereafter, Maryland Casualty sued Mid-Continent seeking a declaratory judgment as to coverage and alleging claims for equitable contribution and breach of contract. A Utah federal district court granted Maryland Casualty's summary judgment motion, finding that Mid-Continent had a duty to defend the underlying action and that Maryland Casualty's claims were timely. The Tenth Circuit affirmed.

The Tenth Circuit ruled that Maryland Casualty's complaint, including its equitable contribution claim, was governed by (and timely under) the six-year statute of limitations for written instruments. Rejecting the argument that the four-year statute of limitations for equity claims applied, the court held that all of Maryland Casualty's claims were "founded upon an instrument in writing." The court stated:

Were it not for Red Point's policies with Mid-Continent, Mid-Continent would not potentially have a duty to defend Red Point in the underlying action, and Red Point would not potentially have a claim against Mid-Continent for failure to defend. . . . Further, were it not for Red Point's policy with Maryland, which contained the transfer of rights provision, Maryland would not potentially have the right to recover from Mid-Continent Thus, Mid-Continent's potential liability to Maryland in this action grows directly out of both policies.

The court distinguished Utah precedent holding that an insurer's contribution claim against another insurer sounds in equity, explaining that such case law establishes equity as an alternative avenue of recourse against a fellow insurer in the absence of a contractual right to recovery, but does not stand for the proposition that equitable contribution claims cannot be derived from and founded upon written contracts.

The court also ruled that Mid-Continent’s duty to defend was not negated by “Your Work” or “Impaired Property” exclusions. The court held that even assuming that the Your Work exclusion barred liability for all allegations relating to property damage to Red Point’s own work or its subcontractors’ work, Mid-Continent still had a duty to defend because the complaint also alleged damage to other real and personal property. The court further held that the Impaired Property exclusion – which applies to claims alleging loss of use of property – did not eliminate coverage because the underlying complaint included allegations of actual damage, not just loss of use.

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