

Seventh Circuit Rules That Policyholder's Suit Against Property Insurer Is Time Barred (Insurance Law Alert)

05.31.22



(Article from *Insurance Law Alert*, May 2022)

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The Seventh Circuit dismissed a suit against a property insurer, ruling that the policyholder's failure to bring a legal action within two years of the date of damage was fatal to its coverage claim. *Legend's Creek Homeowners Assoc., Inc. v. Travelers Indem. Co. of Am.*, 2022 WL 1467456 (7th Cir. May 10, 2022).

In 2016, Legend's Creek, a homeowners' association, filed a claim with Travelers for hail and wind damage that had occurred in May 2016. During the following two-year period, the public adjuster retained by Legend's Creek and Travelers worked together to evaluate the scope and cost of covered damages. During that time frame, Travelers issued three payments totaling more than \$900,000. In 2018, less than three weeks before the contractual deadline to bring a legal action, the adjuster made an additional demand for payment in order to replace non-damaged exterior sides of the building so that they would match the newly repaired side. When Travelers refused, Legend's Creek sued, alleging bad faith and breach of contract. An Indiana district court granted Travelers' summary judgment motion and the Seventh Circuit affirmed.

The Seventh Circuit noted that Indiana law recognizes a few limited exceptions to contractual suit deadlines, but concluded that none applied here. In particular, the court rejected Legend's Creek's assertion that compliance with the suit provision was impossible where, as here, the claim investigation takes more than two years. The court reasoned that Legend's Creek "points to no term in the policy that it did not or could not have abided by within the two-year window." In addition, the court rejected the contention that ongoing cooperation during the two-year period excused the suit limitation deadline, stating: "Though Legend's Creek may not have had a reason to litigate in that period, that doesn't render the policy requirements incomprehensible or its obligations impossible." The court also rejected Legend's Creek's argument that Travelers was obligated to provide notice of its intent to rely on the policy's suit limitation clause, noting the absence of legal support for that contention. Finally, the court held that Travelers did not waive its right to rely on the suit limitations provision by continuing to negotiate with the public adjuster.

Authors and Contacts

Bryce Friedman

Partner

bfriedman@stblaw.com

+1-212-455-2235

Joshua Polster

Partner

joshua.polster@stblaw.com

+1-212-455-2266

