



CLIENT BULLETIN

Tick-Tock: The Illinois Supreme Court Holds the Statute of Limitations for Negligent Procurement of an Insurance Policy Begins to Run Upon Delivery of the Policy

Joseph R. Jeffery | jjeffery@cmn-law.com

Section 13-214.4 of the Illinois Code of Civil Procedure creates a two-year statute of limitations for actions alleging negligent procurement of an insurance policy. 735 ILCS 5/13-214.4. The limitations period begins running, the statute explains, on “the date the cause of action accrues.” 735 ILCS 5/13-214.4. The statute, however, provides no guidance as to when a cause of action accrues. The Illinois Supreme Court addressed that issue in *American Family Mutual Insurance Company v. Krop*, 2018 IL 122556, -- N.E.3d – (2018).

Walter and Lisa Krop were in the market for a new homeowner’s insurance policy. They contend they provided American Family insurance agent Andrew Varga a copy of their previous coverage with Travelers and asked him to provide coverage through American Family that was “equal to the coverages provided by Travelers.” *Id.* at ¶ 4. Through Varga’s efforts, the Krops and American Family agreed to a new policy, which was issued on March 21, 2012.

Predictably, an issue arose in mid-2014 that exposed the Krops to liability that would have been covered under the Travelers policy but was not covered by the American Family policy. American Family filed suit against the Krops seeking a declaration that it properly denied coverage for the Krops’s claimed loss. In September 2015, the Krops counterclaimed, asserting Varga was liable for negligently procuring a policy with narrower coverage than what was requested and that American Family was vicariously liable for Varga’s negligence. Varga and American Family moved to dismiss under Sections 2-615 and 2-619 of the Code of Civil Procedure, arguing the Krops’s claims accrued when the policy was delivered in March 2012 and, therefore, their claims were untimely after March 2014.

The court found that “Illinois courts have typically treated allegations of negligence in relation to insurance policies, such as the negligent procurement claim here, as torts arising out of contractual relationships.” *Id.* at ¶ 18. That is significant, the court explained, because it means those causes of action are analogous to contract actions, as opposed to tort actions, when it comes to determining when the actions accrue. *Id.* Because a breach of contract claim ordinarily accrues at the time of the breach, the Krops’s actions against Varga and American Family accrued on the day Varga procured a policy with narrower coverage than what the Krops requested. *Id.* at ¶ 19.

The Krops urged the court to find the accrual date should be based on the “discovery rule,” in which case the limitations period would not begin running until the Krops “knew or reasonably should have known of the injury and that the injury was wrongfully caused.” *Id.* at ¶ 21. The court seemed to find the discovery rule would not have helped the Krops. It observed that the Krops had an obligation to read their policy and suggested that if they had fulfilled that obligation, they would have or reasonably should have known of Varga’s negligent procurement. The limitations period, in other words, would have begun to run in March 2012 even if the court used the discovery rule to determine the date the Krops’s cause of action accrued. *Id.* at ¶s 22, 29, 35.

Finally, the court acknowledged there may be a “narrow” set of circumstances “in which the policyholder reasonably could not be expected to learn the extent of coverage simply by reading the policy.” *Id.* at ¶ 36. A policy, for instance, “may contain contradictory provisions or fail to define key terms” or “the circumstances that give rise to the liability may be so unexpected that the typical customer should not be expected to anticipate how the policy applies.” *Id.* In



those instances, the policyholder would not be able to read and discover an agent's negligence at the time of delivery. Because none of those circumstances was present in connection with the Krops's claims, their actions accrued when Varga delivered the allegedly non-compliant American Family policy in March 2012. Accordingly, after March 2014, their claims were barred by the two-year limitations period established by Section 13-214.4. *Id.* at ¶ 40.

If you have any questions about this Client Bulletin, please feel free to contact any of the attorneys listed or the CMN attorney with whom you regularly work.

Chittenden, Murday & Novotny LLC
303 W. Madison St. Suite 1400
Chicago, Illinois 60606
312.281.3600