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The District of New Jersey Affirms Application of Suit Limitation Provision in Train Derailment

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Although we cover a wide variety of topics and issues on this blog, one issue that recurs with some frequency is the appropriate application of suit limitation provisions that are found in most property policies. The latest case to confirm that suit limitation provisions are valid and enforceable, and to highlight the peril an insured may encounter by not recognizing or addressing those provisions during the course of a claim, is [Consolidated Rail Corp. v. Aspen Spec. Ins. Co., et al.](#), 2019 WL 2417704 (D.N.J. June 10, 2019). That case involved a dispute between Consolidated Rail Corporation, otherwise known as “Conrail,” and Hudson Specialty Insurance Company (among other defendants), one of Conrail’s three excess layer insurance carriers.

The loss in question involved a November 2012 train derailment in Paulsboro, New Jersey, and the subsequent cost incurred by Conrail in reconstructing the bridge on which the accident occurred. Given various permitting and rebuilding issues that arose in the repair of the bridge, the project was not finished until March 2016, nearly three-and-a-half years after the accident. In December 2016, Conrail submitted a proof of loss totaling nearly \$14 million to Hudson and the other excess carriers. Hudson denied Conrail’s claim several months later, and for reasons not relevant to this post. Litigation followed, and Conrail and Hudson cross-moved for summary judgment on, among other issues, the applicability of the suit limitation provision that required Conrail to bring suit within one year of Conrail’s discovery of the occurrence giving rise to the claim.

Last week, the Court, Judge Robert B. Kugler presiding, granted Hudson’s motion for summary judgment and dismissed Conrail’s claims. The Court began its opinion by noting that, under New York law (which applied both because the policy included a New York choice of law provision and because the parties agreed New York law applied to this dispute), parties can agree to contract to statute of limitations periods shorter than those designated by statute so long as the shortened period is reasonable under the circumstances. The Court remarked that the New York Court of Appeals has enforced contractual limitations periods as short as six months, and that there was no *per se* concern with a one-year suit limitation provision.

Conrail’s primary argument against application of the suit limitation provision was that, because it took several years for the necessary repairs to occur, it was not possible for them to commence suit within a year following the derailment. In support of that proposition, Conrail relied on the New York Court of Appeals case of [Executive Plaza, LLC v. Peerless Ins. Co.](#), 22 N.Y.3d 511 (2014), in which the court declined to enforce a two-year suit limitation provision because it was “neither fair nor reasonable” to do so under the circumstances presented. The Court rejected Conrail’s comparison to *Executive Plaza*, finding that, unlike in that case, there were no conditions precedent (such as the completion of repairs, or the submission of a proof of loss) to Conrail’s ability to initiate suit against Hudson – the only thing required by the applicable policy for suit to commence was that it be brought within a year of the subject occurrence. In response to Conrail’s suggestion that it wouldn’t be practical or feasible to commence suit before repairs were completed, and the quantum of damages known, the Court noted that Conrail could have requested an extension of the suit limitation period from Hudson, and chided Conrail for not doing so. In fact, the Court wrote that Conrail “failed to take any action to protect itself,” and that, despite being “more than sophisticated enough” to have done so, Conrail “has only itself to blame.”

The Court also rejected Conrail’s argument that Hudson “slipped” the suit limitation clause into the policy, that it wasn’t agreed to, and that it therefore shouldn’t be applicable or enforceable. The Court held that Conrail’s failure to plead or pursue a reformation theory for more than two years, and until responding to Hudson’s

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dispositive motion, barred Conrail's argument. The Court also found that Conrail was stopped from contesting the contents of the policy because it had, as an attachment to its initial complaint, represented that the policy, with its suit limitation provision, was "true and correct." Any eleventh-hour attempt to challenge the validity of certain provisions of that document would be "irreconcilably inconsistent" with Conrail's previous assertions.

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