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Enforcing exclusions and limitations before the policy is issued

By Ronald J. Clark

Oregon statute provides that a property and casualty policy should be formally issued to the insured within 90 days of the coverage being bound. (ORS 742.043) In the period after the coverage is bound, but before the policy is actually issued, it is the binder which provides the coverage even though the exact terms of the coverage are not expressly set out in the binder itself.

Sometimes, a carrier will take longer than 90 days to issue the actual policy and, occasionally, an insured will suffer a loss after the binder has been issued but before they have actually received the policy. Such was the case in *Cooper, et al. v. St. Paul Surplus Ins. Co.*, USDC Case No. CV05-785-MO. The policy was bound on June 7, 2001. The insured discovered dry rot in its commercial building on or about November 2001, and the policy was not received by the insured until approximately December 5, 2001.

The claim was investigated and, ultimately, a portion of the claim was paid and the remainder was denied. Approximately three years later, the insured filed suit in U.S. Federal District Court in Oregon. The insurance company raised the two-year suit limitation provision in the policy as a defense in the case and filed for summary judgment on that basis. The insured contended that the company was not permitted to rely upon the suit limitation provision because: (a) the policy was issued more than 90 days after the binder; and (b) the suit limitation provision was not explicitly identified in the binder.

On cross-Motions for Summary Judgment, Judge Michael Mosman concluded that the two-year suit limitation provision in the policy was enforceable because the Oregon statute governing enforceability of binders does not require that each limitation and exclusion be expressly quoted in the binder in order for it to be enforceable. Instead, the legislative scheme envisions that the binder will simply identify, with reasonable specificity, the coverage forms which will be used to make up the policy once it is processed and sent to the insured.

In this case, the binder listed 22 coverage forms that would be used to make up the commercial policy, including a form titled "General Rules," which was indeed included in the policy sent to the insureds. The two-year suit limitation provision was included in the "General Rules" form. Accordingly, the court concluded that the two-year suit limitation provision was enforceable.

The court did not make a determination whether the two-year period would begin to run from the date of the damage or from the date of the claim denial because under either scenario, this particular claim was time-barred. St. Paul Surplus Insurance Company was represented by Ronald J. Clark and Marianne M. Ghim of Bullivant's Portland office.