

Fifth Circuit Clarifies Claims Handling Quandary: When Does a Cause of Action Accrue?

The U.S. Court of Appeals for the Fifth Circuit issued a *per curiam* opinion in *De Jongh v. State Farm Lloyds*, 2016 U.S. App. LEXIS 21432 (5th Cir. 2016) that clarified a typical but potentially tricky question involving property claims. The parties disputed whether De Jongh's cause of action accrued on the date that State Farm closed its file without a formal denial or on a subsequent date when State Farm reinspected the property and issued a formal denial. Affirming the district court, the Fifth Circuit held that as a matter of law, De Jongh's cause of action accrued on the date that State Farm closed its file for the first time. However, the Fifth Circuit cautioned that the outcome could have been different if State Farm had "strung De Jongh along without denying or paying the claim" concluding that even if the failure to send a denial letter was tortious, it did not reset the limitations clock to State Farm's formal denial.

The dispute began with De Jongh's hail storm claim in May 2012. State Farm dispatched a claims adjuster within the week. The adjuster noted in De Jongh's claim file that the roof's shingles were deteriorating and that minor damage was caused by an overhanging tree that was excluded as a maintenance issue. According to the adjuster, the hail was too small to have caused any damage. The adjuster informed De Jongh that the inspection revealed no covered damages. State Farm's internal notes indicated that it intended to issue a denial letter to De Jongh explaining the adjuster's findings. However, it was unclear whether the denial letter was actually issued and on July 12, 2012, State Farm closed its file without issuing payment. De Jongh denied receiving any denial letter.

De Jongh subsequently requested a reinspection by State Farm. State Farm dispatched a new adjuster who observed damage to a metal patio cover that was not listed in the initial adjuster's report. The adjuster determined that covered damage was below De Jongh's deductible. State Farm closed its file again. On August 23, 2012, State Farm issued a formal denial letter.

De Jongh initially filed suit in November 2012 against the adjuster and State Farm Lloyds, Inc., which is a related but distinct entity from the defendant in this case. De Jongh alleged breach of contract as well as violations of the Texas Deceptive Trade Practices Act and Texas Insurance Code. There was some confusion about the identity of the proper defendant. The district court eventually issued a take-nothing judgment in favor of the adjuster and State Farm. The Fifth Circuit vacated the judgment and remanded for lack of subject matter jurisdiction.

On July 14, 2014, De Jongh refiled her case in state court, amending her claims to add State Farm Lloyds and drop the claims against the adjuster and State Farm Lloyds, Inc. State Farm removed the case, contending that De Jongh's claims were barred under the limitations clause in De Jongh's policy, which required claims to be filed within two years and one day of accrual. Under Texas law, bad faith and other extracontractual claims must be brought within two years of accrual. The district court found that De Jongh's cause of action accrued on July 12, 2012, when State Farm denied the claim and closed its file. Thus, De Jongh missed her statute of limitations by a matter of only 24 – 48 hours. Noteworthy is that De Jongh specifically disclaimed reliance on the discovery rule — a fact that may have changed the outcome.

The Fifth Circuit began its review of the district court's dismissal by noting that the statute of limitations begins to run when facts come into existence that authorize a party to seek a judicial remedy. The Fifth Court also noted that, under Texas law, a cause of action for breach of an insurance contract accrues upon the insurer's denial of the claim. Further, the Fifth Circuit noted that denials are often tied to a written notice and sometimes without an outright denial, accrual must be judged by the facts on a case-by-case basis. Interestingly, the Fifth Circuit cited four cases, all but one of which was unpublished, and described the cases as "the weight of [Texas]



Karl A. Schulz

Member

kschulz@cozen.com
Phone: (832) 214-3933
Fax: (832) 214-3905

Related Practice Areas

- Insurance Coverage
- Property Insurance

authority.” The Fifth Circuit held that De Jongh’s claim accrued upon State Farm’s closing of the claim file even without a notice of denial. The Fifth Circuit reasoned that the closing of the claim file was an objectively verifiable event that unambiguously demonstrated State Farm’s intent not to pay the claim. The Fifth Circuit also held that even if State Farm’s failure to send a denial letter was tortious, i.e. an extracontractual claim with a two-year statute of limitations, it did not reset the limitations clock to State Farm’s subsequent denial.

Finally, the Fifth Circuit opined that the accrual date might have been subject to a factual dispute had State Farm “strung De Jongh along.” Thus, if State Farm had kept the claim alive by failing to close, deny, or pay the claim, the outcome could have been different. However, the Fifth Circuit observed that State Farm closed De Jongh’s claim within two months of inspecting the property.

This opinion reinforces that proper documentation and correspondence regarding claims is vital to good business practices and compliance with Texas law.

Please contact Cozen O’Connor with any questions you have regarding claims practices or defending against time-sensitive lawsuits on claims.