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For Whom the Contractual Suit Limitation Period Tolls

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Virginia's Supreme Court recently addressed an issue of statutory interpretation that affects whether or under what circumstances a contractual suit limitation provision in an insurance policy may be tolled. In *Allstate Prop. and Cas. Ins. Co. v. Ploutis*, the court reviewed an insurance coverage action filed against a homeowner's carrier by a homeowner whose home and certain contents were damaged after water pipes burst on March 19, 2010. While the insurer provided an initial payment, the parties could not agree on the cost of remaining repairs. The homeowner ultimately filed suit on March 16, 2012, alleging breach of contract. For reasons not discussed in the opinion, "[u]pon the request of [the plaintiff homeowner], an order of nonsuit was entered on February 22, 2013." The plaintiff homeowner then re-filed the action on August 21, 2013, more than two years after the loss.

The trial court entered an addendum to the order of nonsuit providing that "the current action is 'merely an abatement of the original action, and the second filing is a reinstatement of the original action'" and thus, "'the present action is still the original action brought within the two year [contractual] limitation period.'" This referred to the subject insurance policy's contractual suit limitation provision, which is typically standard in a fire policy.

In fact, the court noted that a Virginia statute requires certain standard language in all fire policies, including a provision that "no suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity … unless commenced within two years next after inception of the loss." The policy at issue contained a similar, but not identical, provision, stating that "no one may bring an action against us in any way related to the existence or amount of coverage … unless … the action is commenced within two years after the inception of loss or damage."

The court also noted that another Virginia statute provides, "if a plaintiff suffers a voluntary nonsuit … *the statute of limitations* with respect to such action shall be tolled by the commencement of the nonsuited action, and the plaintiff may recommence his action within six months." Relying on this statute, the homeowner argued, and the trial court agreed, that the policy's suit limitation provision—which was mandated by statute—was therefore tolled.

The Virginia Supreme Court reversed in favor of the insurer, finding that while the "statute of limitations" may have been tolled—in this case, the five-year statute of limitations for bringing an action on a contract— nevertheless, a contractual suit limitation provision is not a "statute of limitations" and neither is the code section mandating that all fire policies contain such a provision. Thus, because the new suit was brought more than two years after inception of the loss, the high court held that the action was barred by the terms of the parties' contract, and reversed and entered judgment in favor of the defendant insurer.