

Contractual Limitations Period in Life Insurance Policy Bars Contract-Based Claims, But Not Tort-Based Claims



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Court Holds That Deceit, Negligence and Tort-Based Consumer Protection Claims Are Not Time-Barred

Among the many reasons to read your insurance policy carefully is that it, like other contracts, may contain a contractual limitations period for bringing a suit against the insurer that is shorter than the statute of limitations. In the recent case of *Brown v. Savings Bank Life Insurance Company of Massachusetts*, the plaintiff avoided dismissal of some of her claims when the court restricted the application of the policy's contractual limitations period to contract-based claims. The Massachusetts Appeals Court affirmed the trial court's entry of summary judgment on the plaintiff's claim for breach of a life insurance policy, but reversed the dismissal of claims for deceit, negligence and tort-based unfair trade practices.

The plaintiff was the beneficiary of a term life insurance policy on her husband. At the end of the policy's initial ten-year term during which the premium remained level, the insurer notified the couple that the premium would increase dramatically and suggested that they purchase a new policy. The couple allowed the policy to lapse. After the grace period ended, a sales agent employed by the insurer called and recommended that the husband apply for a new policy, rather than reinstating the lapsed policy, contrary to the insurer's practice to recommend that an existing policy be kept in place until a replacement policy was issued. The husband applied for a new policy, was rejected, and died a month later. (From the time the policy lapsed until the husband's death, reinstatement was available subject to "evidence of insurability.") The Appeals Court held that whether reinstatement was foreclosed during this period was a question of fact for trial.) The plaintiff sued the insurer, arguing that it breached the lapsing policy by not automatically renewing it, that the sales agent had misleadingly steered the couple away from retaining or reinstating the lapsing policy while the application for a replacement policy was pending, and that the insurer negligently supervised the sales agent.

The insurer was granted summary judgment on the plaintiff's count for breach of contract on the basis of the policy's requirement that "[a]ny suit brought on or in respect to this policy shall be brought against us no later than two years after the date the alleged cause of action accrues." The trial court also granted the insurer summary judgment on the remaining claims, ruling that there was no deceit, negligence, or violation of Chapter 93A- Massachusetts' consumer protection statute- as a matter of law. The Appeals Court agreed that the breach of contract claim was time barred (the plaintiff did not contest this), but held that the plaintiff had viable claims for deceit and negligence and for violation of Chapter 93A, and that those claims were not subject to the contractual limitations period.

The Court first reasoned that, although the policy's \$1 million limit was the measure of damages for all the claims, the deceit and negligence claims were not disguised contract claims, but sounded in tort. In addition, the Court concluded that the plaintiff's consumer protection claim was based on a theory of deceit or misrepresentation and was therefore tort-based. These claims were therefore not barred by the contractual limitations period for claims "on or in respect to" the life insurance policy.

The insurer argued that Massachusetts General Laws Chapter 175, § 22, which prohibits an insurer from "limiting the time for commencing actions against it to a period of less than two years" from the date the cause of action accrued, permitted it to contract for a two-year limitations period for tort and tort-based Chapter 93A claims, and that it had done so. The Court did not agree, concluding that the insurer's contractual limitations period did not unambiguously extend to tort and statutory claims. The Court also held that Chapter 175, § 22 should be read in harmony with, and not in contradiction to, the statutory limitations periods for tort (3 years) and Chapter 93A (4 years) claims.

Further, the Court held that a contractually shortened limitations period on tort-based consumer protection claims would violate public policy. The opinion suggests that that this public policy may not extend to unfair trade practices claims under c. 93A between two businesses, and it is not clear whether an insurer could issue a policy expressly limiting to two years the time for a commercial insured to bring tort-based 93A claims or tort claims against it.

The Court's holding that the contractual limitation in the SBLI policy did not clearly include tort and statutory claims is relevant to contractual limitations provisions outside the insurance context. In light of *Brown*, if a contract is intended to limit the time for any suits between the contracting parties, including tort and statutory claims, it should say so (the public policy against shortening the limitations period for tort-based consumer protection claims would presumably bar the enforcement of such a provision with respect to such claims by

a business against a consumer).

Practitioners should note that the Massachusetts statutory fire insurance policy, Chapter 175, § 99, contains a limitations period for suits “for the recovery of any claim by virtue of this policy” of two years from the time the loss occurred – a different and shorter period than that permitted under § 22, which begins to run when the claim accrues (a breach of contract claim typically accrues at the time of the breach). So, we end where we began: read the policy, including any contractual limitations provision, with care.