Foreign Underwriter, Agent Dismissed From Action

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Body

A federal judge on July 8 granted a foreign underwriter's motion to dismiss an action based on a suit limitation provision and the underwriter's agent's motion to dismiss because of lack of personal jurisdiction (William H. Jump, et al. v. TL Dallas [Special Risks] Ltd., et al., No. 03 C 34, N.D. Ill.; *2003 U.S. Dist. LEXIS 12303).*

(Memorandum opinion and order available 13-030812-017Z)

William and Brian Jump insured their boat through Worldwide Marine Underwriters. Worldwide contacted broker Schaeffer & Associates, which placed the insurance with underwriter Reliance National Insurance Co. (Europe) Ltd. and the underwriter's agent TL Dallas (Special Risks) Ltd., both United Kingdom entities. The policy was to include an extended trailering provision that would allow them to use, store and trailer their boat anywhere in the United States. The Jumps sought coverage after their boat was stolen.

TL Dallas handled and ultimately denied the Jumps' claim because the boat was allegedly not stored according to the policy's requirements.

The Jumps filed this action pro se against Worldwide Marine, Schaeffer, Reliance and TL Dallas for breach of contract, asserting that the extended trailering provision was illusory and simply a ploy to sell the policy. TL Dallas moved to dismiss for lack of personal jurisdiction and insufficient process; Reliance and Worldwide Marine moved to dismiss for lack of personal jurisdiction; and the Jumps moved for a default judgment against Schaeffer, which moved to quash service.

Reliance

Reliance moved to dismiss because the Jumps failed to commence this action within one year after their boat's theft, as required by the policy the theft occurred in February 2001, and the Jumps filed suit in January 2003.

U.S. Judge Matthew F. Kennelly of the Northern District of Illinois found that "because plaintiffs filed suit after the expiration of the contractual limitation period and because they have not alleged conduct on behalf of Reliance that could support a claim of waiver or estoppel, the Court grants Reliance's motion to dismiss."

Worldwide Marine

Worldwide Marine also moved to dismiss based on the one-year limitation on filing suit. However, Judge Kennelly first noted that Worldwide Marine is not entitled to take advantage of the policy's limitation because the provision applies only between the parties to the contract, the Jumps and Reliance.

Further, the judge explained, "It may be true that a failure by the Jumps to comply with the conditions for recovery under the policy such as the provision for appropriate storage ultimately might bar their claims' success against Worldwide, though we cannot make that determination on a motion to dismiss. Worldwide, however, has cited no authority for the proposition that an insured's failure to file suit within the limitation period presents such a bar."

Because he could not say that the Jumps will be unable to prove that they entered an agreement with Worldwide Marine to provide coverage that would have covered the loss they suffered and that Worldwide Marine failed to do so, the judge denied its motion to dismiss.

TL Dallas's Motion To Dismiss

TL Dallas has moved to dismiss for lack of personal jurisdiction disavowing any contacts whatsoever with the State of Illinois.

"None of the facts identified by the Jumps indicate that TL Dallas made any sort of purposeful contact with Illinois," the judge found. "There is no indication that TL Dallas reached out into Illinois to create a contractual relationship. Because plaintiffs do not point to any specific actions taken by TL Dallas that reflect that it purposefully availed itself of the privilege of conducting activities in Illinois, they cannot overcome TL Dallas's jurisdictional challenge. We therefore dismiss plaintiffs' claims against TL Dallas for lack of personal jurisdiction."

The judge also denied Schaeffer's motion to quash and the Jumps' motion for default judgment.

Reliance and TL Dallas are represented by Richard M. Kuntz of Bollinger, Ruberry & Garvey in Chicago. Worldwide Marine is represented by Panos T. Topalis and Jennifer Lynn Jacobs of Tribler Orpett and Meyer in Chicago. Schaeffer is represented by Suzanne E. Coe of Atlanta. The Jumps appeared pro se.

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