PLUNKETT COONEY

Travel Insurance, Contractual Limitations Provision, Policy Reformation Coverage Update

November 15, 2022

Travel Insurance – Second Circuit (Georgia, Florida, Oregon, Utah, Pennsylvania and Missouri Law)

In re Generali COVID-19 Travel Ins. Litig.
576 F. Supp. 3d 36 (S.D.N.Y. 2021), aff'd sub nom.

Oglevee v. Generali U.S. Branch
No. 22-336-CV, 2022 WL 16631170 (2nd Cir. Nov. 2, 2022)

Plaintiffs were scheduled to take trips in 2020, for which they had purchased travel insurance. All the trips were subsequently canceled due to COVID-19 restrictions, including various state governmental stay-at-home restrictions. The plaintiffs filed claims under their travel insurance policies, which were provided by Generali US Branch and Customized Services Administrators, Inc. (Generali). Generali denied the claims on the basis that the travel insurance policies did not cover losses resulting from government issued stay-at-home orders.

The plaintiffs filed a putative class action against Generali, alleging that their losses were "Covered Events," which are defined in the policies in part as a "quarantine" and "unavailable accommodations due to … natural disaster." "Quarantine" was defined in the policies as "the enforced isolation of [the insured or their] Traveling Companion, for the purpose of preventing the spread of illness." Generali argued that the plaintiffs' trip cancelations were not "Covered Events," and also that coverage was precluded by a general exclusion for any loss "caused by, or resulting from, ... travel restrictions imposed for a certain area by governmental authority." As such, Generali moved to dismiss the action.

The U.S. District Court for the Southern District of New York held that the plaintiffs "failed to state facts showing that they are entitled to compensation under the Policies because the defendants have shown as a matter of law that the plaintiffs' claims are barred by the valid General Exclusion." The district court reasoned that to the extent that COVID-19 prevented the plaintiffs from taking their trips, it was only because of the governmental stay-at-home orders, and as such, and based on a plain reading of the general exclusion, the travel restrictions exclude coverage for the Plaintiffs under the policies. The district court further reasoned that the general exclusion does not render the policies illusory because there could be quarantines that do not fall within the general exclusion. However, the district court noted that a true quarantine cannot be described as a "travel restriction imposed for a certain area."

The district court further held that "plaintiffs have not pleaded facts sufficient to show a prima facie entitlement to compensation due to a Quarantine." The district court reasoned that stay-at-home orders do not constitute a quarantine because the orders do not create a state of enforced isolation since the plaintiffs were permitted to leave their homes for various purposes. The district court specifically rejected the plaintiffs' argument that they were under a quarantine because their self-enforced isolation constituted enforced isolation. Moreover, the district court recognized that states of emergencies do not prevent a person from traveling, and as such, states of emergency cannot be described as quarantines and do not trigger coverage under the policies.

Furthermore, the court held that none of the plaintiffs were entitled to refunds of their premiums because the policies clearly stated that the premiums were not refundable after 10 days. Because Generali's denials were reasonable, the district court found that the plaintiffs' claims for bad faith and breach of the duty of good faith and fair dealing were without merit. The district court also held that the plaintiffs' claim for conversion similarly failed because conversion requires that the plaintiffs be entitled to the chattel at issue. Because the plaintiffs' claims for breach of contract, bad faith, unjust enrichment, or any other claim that would entitle them to payment failed, the elements of conversion were not met. Finally, the district court held that the plaintiffs were not entitled to declaratory judgment because none of their claims had merit. As such, the district court granted Generali's motion to dismiss.

The plaintiffs appealed dismissal of their breach of contract and unjust enrichment claims, arguing that the travel insurance policies' general exclusion does not apply and that coverage for a quarantine and natural disaster apply. The plaintiffs further argued that Generali was unjustly enriched by portions of the insurance premiums. The U.S. Court of Appeals for the Second Circuit similarly held that the plaintiffs' arguments are without merit and affirmed the judgment of the district court.

By: Danielle Chidiac

Contractual Limitations Provision in Policy – Second Circuit (New York Law)

Sportsinsurance.com, Inc. v. Hanover Ins. Co.
No. 21-1967-cv (L), 21-2063-cv, 2022 WL 16706941 (2nd Cir. Nov. 4, 2022)

The U.S. Court of Appeals for the Second Circuit affirmed, in part, and reversed, in part, the federal district court's decision granting, in part, and denying, in part, Hanover Insurance Company, Inc.'s (Hanover) motion to dismiss Sportsinsurance.com, Inc.'s (Sportsinsurance) complaint. The appellate court affirmed the district court's dismissal of Sportsinsurance's breach-of-contract claim, but it reversed the district court's denial of Hanover's motion to dismiss Sportsinsurance's breach of the implied covenant of good faith and fair dealing claim.

In January 2016, Sportsinsurance discovered that its Chief Financial Officer (CFO) embezzled from the company. Sportsinsurance sought coverage under its insurance policy issued by Hanover (policy). In January 2017, Hanover denied the claim. Rather than file a lawsuit against Hanover, Sportsinsurance pursued legal action against its CFO and obtained a judgment in July 2019. Sportsinsurance then submitted a second claim to Hanover, which was again denied.

In March 2020, Sportsinsurance filed its lawsuit against Hanover alleging, among other things, that Hanover breached the terms of the policy and the implied covenant of good faith and fair dealing. The district court dismissed the breach-of-contract claim as time-barred under the policy's contractual limitations provision, which required any claim "involving loss" to be filed within two years from the date the loss was discovered. The district court denied Hanover's motion to dismiss the breach of implied covenant of good faith and fair dealing claim, finding that the claim was not subject to the limitations provision because it did not "involve loss."

The appellate court concluded that the limitations provision in the policy was reasonable. It found that the loss was discovered in January 2016 when Sportsinsurance learned that its CFO embezzled from the company, but the breach-of-contract claim was not brought against Hanover until March 2020 – well past the two-year limitations period in the policy. The appellate court also concluded that the implied covenant of good faith and fair dealing claim was time-barred. It held that the limitations provision applied to the claim because it involved the underlying embezzlement in 2016, even though the crux of Sportsinsurance's allegations concerned Hanover's mishandling of the insurance claim and failure to pay the claim, which occurred after 2016. For these reasons, the appellate court affirmed the district court's dismissal of the breach of contract claim but reversed the decision to deny Hanover's motion to dismiss on the breach of implied covenant claim.

By: Joshua LaBar

Policy Reformation – New York

34-06 73, LLC v. Seneca Ins. Co.
--- N.E.3d ----, 2022 N.Y. Slip Op. 06029, 2022 WL 14914085 (N.Y. Oct. 27, 2022)

The New York Court of Appeals, the state's highest court, reversed the decisions of the trial court and appellate court, which found a protective safeguards endorsement in an insurance policy unenforceable because it was added to the policy as a result of mutual mistake. The Court of Appeals found that the insurer was not obligated to provide coverage for a fire at the insured's vacant property, and was entitled to deny coverage based on the insured's failure to install a sprinkler system.

34-06 73 LLC (34-06) owned vacant commercial properties. The company's owner purchased an insurance policy from Seneca Insurance Company (Seneca) covering several of the properties. The policy contained a protective safeguards endorsement which stated that Seneca would "not pay for loss or damage caused by or resulting from fire if, prior to the fire, the policyholder ... [k]new of any suspension or impairment in any protective safeguard ... and failed to notify" Seneca, or otherwise "[f]ailed to maintain any protective safeguard ... in complete working order." Shortly after the policy was issued, Seneca had an inspection conducted at one of 34-06's properties and determined there was no compliant sprinkler system. Approximately four months later, a fire occurred at the property. Seneca denied coverage on the basis that the property did not have a compliant sprinkler system. 34-06 commenced a declaratory judgment action alleging that it had complied with all relevant conditions and that Seneca improperly denied coverage.

Some of the evidence introduced at trial supported the notion that 34-06's owner never intended to have the protective safeguards endorsement added to the policy and that it might have been added by mutual mistake. The trial court allowed 34-06 to amend its complaint to conform to the proofs at trial, adding a claim for reformation of the policy. The jury ultimately awarded a verdict in 34-06's favor, finding that the policy should be reformed to remove the protective safeguards endorsement. The appellate court affirmed the judgment.

The Court of Appeals reversed the decisions of the appellate court and the trial court, finding that the trial court should not have granted the motion to amend the complaint because "it is undisputed that when plaintiffs sought to amend their complaint the statute of limitations on the reformation claim had expired and was therefore time-barred." Looking at the original declaratory judgment complaint, the high court found that it failed to put Seneca on notice of "the transactions, occurrences, or series of transactions or occurrences, to be proved [as part of a request for contract reformation]" as required under New York law. The original complaint "provided no indication that the written policy failed to reflect the parties' intent" and "contained no alternate theory of recovery or factual allegations based on pre-formation transactions or occurrences [including the insured's stated preference that the Protective Safeguards Endorsement not be included]"; instead, "if anything, it suggests the opposite because, by asserting total compliance, plaintiffs necessarily disclaimed any challenge to the policy's terms, specifically the [Protective Safeguards Endorsement]."