

THOUGHT LEADERSHIP

News

INSURER'S PRE-SUIT COMMUNICATIONS AND POST-SUIT REQUEST FOR STATUS UPDATE TO COMPLAINANT-PLAINTIFF'S COUNSEL DID NOT BAR THE INSURED'S DEFENSE OF LIMITATIONS

Newsbrief

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Last week, the Fort Worth Court of Appeals concluded that Travelers' pre-suit communications and post-suit request for status update to third-party complainant-plaintiff did not bar the insured's defense of statute of limitations. In *Woods v. Soules*, No. 02-17-00336-CV, 2018 WL 2248488 (Tex. App.—Fort Worth, May 17, 2018, mem. op.), Mr. Woods was driving his motorcycle when Mr. Soules, driving a commercial truck, allegedly failed to yield the right of way causing Mr. Woods to crash his motorcycle. The accident occurred on August 22, 2014. Mr. Woods filed suit on February 21, 2017, after the expiration of the statute of limitations. As such, Mr. Soules moved for summary judgment on his affirmative defense of limitations. In response, Mr. Woods contended that the doctrines of equitable estoppel and waiver barred Mr. Soules from asserting the defense of limitations. That is, Mr. Woods contended that Mr. Soules' insurer, Travelers, induced him into delaying filing suit beyond the statute of limitations (equitable estoppel) and engaged in conduct inconsistent with the assertion of a limitations defense (waiver).

In support of his theory of equitable estoppel, Mr. Woods relied on the fact that the Travelers' adjuster told Woods' counsel that Travelers had accepted liability and the adjuster informed Woods' counsel that Travelers would need Woods' medical bills and records or a medical release to obtain his bills and records. On appeal, the court held that Mr. Woods did not raise a genuine issue of material fact in support of his theory of equitable estoppel, and affirmed the trial court's order granting summary judgment in favor of Mr. Soules. The court reasoned that (1) no communications or conversations occurred between Woods' counsel and any Travelers' representative between June 2016 and when the statute of limitations ran, and (2) Travelers did not pay Woods' bodily injury claim or send any type of written acceptance of liability for Woods' bodily injury claim. The court further reasoned that "although Travelers had paid Woods' property damage claim and was working with Woods' counsel to collect information regarding Woods' medical expenses, no summary judgment evidence existed that these communications contained false facts or concealed material facts.

In support of his theory of waiver, Mr. Woods relied on the fact that Travelers requested a status update from Woods' counsel after the statute of limitations expired. According to Mr. Woods, the request for a status update was inconsistent with Travelers' subsequent assertion of limitations and indicated the intent on the part of Travelers to

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waive the defense of limitations. On appeal, the court noted that no case law supported Mr. Woods' contention (i.e. "Travelers' single incident of post-limitations conduct--requesting a status update--constitute[d] conduct clearly demonstrating . . . an intent to waive the affirmative defense of limitations") and affirmed the trial court's order granting summary judgment in favor of Mr. Soules.