

THOUGHT LEADERSHIP

News

FEDERAL COURT DISMISSES HAIL CLAIMS AS TIME-BARRED

Newsbrief

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Last Monday, the United States District Court for the Western District dismissed an insured's claims for property damage as time-barred. In *Sutton Place 1 Townhomes v. AmGuard Insurance Company*, Sutton Place claimed it suffered hail damage in 2019 and that AmGuard breached the insurance policy, among other things, in its January 29, 2020, claim decision. Plaintiff timely filed suit on November 2, 2021, but did not serve AmGuard for another six months – three months after the statute of limitations expired. AmGuard removed to federal court and asserted that the lawsuit was time-barred in a motion to dismiss under Rule 12(b)(6), arguing that Plaintiff did not meet Texas' due diligence requirement in bringing suit. The district court analyzed the applicable policy language setting forth the contractual limitations period, holding that the two-year contractual period applied to the claims at issue.

Sitting in diversity, the district court then analyzed Texas' due diligence requirement, noting that Texas courts perform a burden-shifting analysis in which the Plaintiff may explain its delay to show due diligence. Here, the Plaintiff did not offer any explanation. The district court then analyzed whether AmGuard's motion was appropriate as a 12(b)(6) motion or whether it should be converted to a summary judgment motion, finding that it was not required to convert to a 12(b)(6) motion. Additionally, the district court considered whether AmGuard's 12(b)(6) motion should be considered as a 12(b)(4) or (5) motion, adopting the majority position that the defense is one that should be considered under 12(b)(6). Finally, the Court considered whether Plaintiff's presuit notice letter under 542A excused its failure to timely file and serve its petition on AmGuard, holding that it did not.

Editor's Note: Martin, Disiere, Jefferson & Wisdom, LLP had the privilege of representing AmGuard in this matter.