

Statute of Limitations Stands: Pennsylvania Court Affirms Dismissal of Breach of Contract Claim Against Insurance Broker

PLUS Blog

Posted on March 4, 2025, by plushq

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In a decision that is meaningful for both insurance brokers and the attorneys who defend them, the Pennsylvania Superior Court recently affirmed the Philadelphia County Court of Common Pleas' dismissal of breach of contract claims asserted against an insurance broker in *Thuong Erin Wasielewski, Individually and as Administratrix of the Estate of Thuong D. Nguyen, Deceased v. Goebel Insurance Agency, Inc. and Christopher Goebel*, 2025 WL 66728.* The case arose from an underlying wrongful death lawsuit, and a related declaratory judgment lawsuit brought by the insurer against the policyholder.

The trial court had granted the defendants' motion for judgment on the pleadings, premised on the expiration of the statute of limitations before the plaintiff initiated the instant civil lawsuit. On appeal, the Pennsylvania Superior Court affirmed the decision, finding that the plaintiff's claims were time-barred based on the date(s) on which the plaintiff was notified of a lack of coverage and, resultantly, a potential claim against the defendants.

Case background and timeline

On March 2, 2018, the underlying wrongful death action was initiated, alleging wrongful death, premises liability and negligent

security against a restaurant, Lee's Café & Bistro, LLC, for an employee's (plaintiff-decedent Nguyen's) March 3, 2016 murder at the business premises. Lee's Café tendered its defense for the wrongful death action to its insurer, who had issued a commercial general liability and property insurance policy procured by the defendants. On June 13, 2018, the insurer filed the declaratory judgment action, seeking a declaration that it did not owe defense and/or indemnity to Lee's Café for the wrongful death action pursuant to the employer's liability exclusion, and there was no workers' compensation coverage provided. On November 15, 2019 the court granted the insurer's MSJ and determined no coverage was owed.

On April 22, 2016, upon receipt of Lee's Café's notice of claim, the insurer issued a reservation of rights letter, outlining potential grounds for disclaiming coverage and stating that the injuries to employees were excluded under the policy. On April 20, 2018, the insurer issued a denial letter, disclaiming coverage for the wrongful death action, citing the employer's liability exclusion.

The trial court held that plaintiff's breach of contract claims arising from the defendants' alleged failure to obtain "all necessary coverages," including liability coverage for the

employees of Lee's Café that would have covered the March 3, 2016 loss, were time-barred by the applicable four-year statute of limitations for contract actions in Pennsylvania.

The trial court opinion identified the dates the plaintiff's cause of action potentially accrued, all of which were more than four years prior to the inception of the lawsuit against the insurance broker. The court further rejected the plaintiff's argument that the claims did not accrue until after the insurer won summary judgment in the declaratory judgment action (when Lee's Café allegedly sustained an "actual injury"), despite the several times preceding that date when Lee's Café was put on notice that employees were not covered under the policy. The court further rejected the plaintiff's argument that Lee's Café could not bring the suit against the broker while the insurer was providing a defense in the wrongful death action.

Appellate ruling

On appeal, the Pennsylvania Superior Court upheld the trial court, reiterating that the loss for which coverage was sought was the March 3, 2016 murder. Moreover, as of June 14, 2018, when the carrier denied coverage, all necessary elements were present to trigger a potential breach of contract claim. The Superior Court found the breach occurred in December 2015, when the defendants allegedly failed to follow instructions and procured a policy other than that which they had been contracted to procure, and the loss occurred on March 3, 2016. At the time the insurer denied coverage in June 2018, "Defendants became liable to [Lee's Café] for breach of contract." The court further commented that Lee's Café failed to allege facts to show that it did not know of the alleged injury on June 14, 2018, when the carrier

filed the declaratory judgment action. The June 2018 filing date of the declaratory action served as the latest discovery date of the plaintiff's purported injury.

A bright-line test for suit preclusion

The Superior Court's ruling clarifies and expands the general dearth of case law regarding the statute of limitations applicable to claims against insurance brokers. With multiple potential dates of notice or "discovery" pursuant to the discovery rule, the commencement date is, at the latest, the date a declaratory judgment action or other definitive coverage denial notification is tendered. This decision is meaningful for insurance brokers and their defense counsel, as it sets forth a bright-line test for suit preclusion. Further, the decision outright rejects the plaintiff's theory that the errors & omissions claim did not accrue until the insurer prevailed in the declaratory judgment action.

Insurance brokers should remain vigilant when an insurance customer's claim is denied by the carrier and monitor any related coverage litigation. Doing so can assist in developing procedural defenses to a subsequent professional liability claim asserted against the insurance professional, as well as substantive grounds for potential causation defenses.



**The authors represented defendants Goebel Insurance Agency, Inc. and Christopher Goebel in the trial court action, and appellate attorney Carol Vanderwoude of Marshall Dennehey handled the appellate briefing and argument.*

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