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United States District Court, C.D. California.

NIAGARA BOTTLING, LLC
v.
ZURICH AMERICAN INS. CO.

Case No. ED CV 19-113 PA (KKx)
|
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Attorneys and Law Firms

Douglas J. Brown, Marc D. Halpern, Abelson Herron Halpern LLP, San Diego, CA, Vincent H. Herron, Abelson Herron Halpern LLP, Los Angeles, CA, for Niagara Bottling, LLC.

Lawrence Hecimovich, Jonathan R. Gross, Mound Cotton Woolan and Greengrass LLP, Emeryville, CA, for Zurich American Ins. Co.

Proceedings: IN CHAMBERS - COURT ORDER

The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

***1** Before the Court are a Motion for Summary Judgment filed by defendant Zurich American Insurance Company ("Zurich" or "Defendant") (Docket No. 32) and a Motion for Partial Summary Judgment filed by plaintiff Niagara Bottling, LLC ("Niagara" or "Plaintiff") (Docket No. 35). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that these matters are appropriate for decision without oral argument. The hearing calendared for October 7, 2019, is vacated, and the matters taken off calendar.

I. Factual and Procedural Background

Niagara, which is headquartered in California, manufactures bottled water. For its bottling operations in the cities of Allentown and Hamburg, Pennsylvania, Niagara purchases spring water from several springs, including one called Far Away Springs. On June 10, 2015, a water sample taken at Far Away Springs tested positive for E. coli. bacteria. Far Away Springs "ozonates" raw water, which would kill any E. coli bacteria. Niagara also ozonated the water it received from Far Away Springs. Accordingly, there should be no live E.coli bacteria in the water that Niagara bottles and sells.

On June 18, 2015, Niagara was first notified that a water sample from Far Away Springs tested positive for E. coli. The Pennsylvania Department of Environmental Protection Bureau of Safe Drinking Water ("the Bureau") told Niagara that Niagara must recall the water or face a formal government recall. Niagara recalled all of its bottled water products that were produced in its Allentown and Hamburg, Pennsylvania facilities between June 10, 2015 and June 18, 2015 (the "Far Away Springs Recall"). The Bureau required, or effectively forced, Niagara to conduct the Far Away Springs Recall. Starting on June 29, 2015, Niagara dumped thousands of gallons of water and destroyed the bottles of water by placing them through a chipper and a grinder at a rented space in a warehouse where most of the recalled spring water product was sent and destroyed. In the course of the Far Away Springs Recall, none of Niagara's water was ever found to actually contain E. coli or any other contaminant. The Far Away Springs Recall subjected Niagara to losses including, but not limited to, the value of the disposed water and destroyed bottles.

Zurich issued a commercial property insurance policy to Niagara with policy number PPR 0177322-00 and a policy period from August 6, 2014 to August 6, 2015 (the "Policy"). On December 2, 2016, Niagara, through its insurance broker, tendered a claim to Zurich under the Policy for the losses incurred from the Far Away Springs Recall. Niagara's tender referred to the Far Away Springs Recall as a "voluntary recall." On December 14, 2016, Zurich sent a letter to Niagara acknowledging the claim. As part of that letter, Zurich quoted certain policy provisions and stated that it "reserves its rights to rely on the above exclusions and conditions, and any other applicable policy provisions not cited herein, in regard to your claim." (ZAIC_000009.)

***2** On June 9, 2017, Zurich denied Niagara's claim on the grounds that Niagara's destruction of the bottled water was voluntary, not fortuitous, and that the water Niagara recalled had not suffered any direct physical damage. Zurich also concluded that Niagara's claim fell within the Policy's contamination exclusion. Zurich's letter denying Niagara's claim stated that Zurich "reserves all of its rights and defenses under the policy and the law, whether or not specifically referred to herein, and no waiver nor estoppel is intended nor inferred. Zurich ... specifically reserves the right to amend or supplement its position set forth herein based on

additional facts or information which comes to light in the future." (ZAIC_000680.)

On November 17, 2017, Niagara informed Zurich that "the government required that [the bottled water] must be physically destroyed and discarded." On December 21, 2017, Zurich again denied Niagara's claim. Zurich's denial relied, in part, on the Policy's exclusion for loss or damage arising from the enforcement of any law, ordinance regulation or rule. Zurich reserved "all of its rights and defenses under the policy and the law, whether or not specifically referred to herein, and no waiver nor estoppel is intended nor inferred." (ZAIC_000034.)

On January 29, 2018, Niagara confirmed that its destruction of the water was "required, monitored, and verified by the government, under threat of unilateral government enforcement" in accordance with "federal government standards." Zurich responded to Niagara's January 29 letter on March 23, 2018. Niagara sent another letter on April 30, 2018. On May 16, 2018, Zurich reaffirmed its denial of Niagara's claim.

Niagara filed this action on January 18, 2019. The Court dismissed the original Complaint with leave to amend to provide Niagara with an opportunity to cure its deficient diversity jurisdiction allegations. Niagara filed its First Amended Complaint ("1st AC") on January 31, 2019. The 1st AC alleges claims for: (1) declaratory judgment; (2) breach of contract; and (3) breach of the covenant of good faith and fair dealing.

II. Legal Standard

Federal Rule of Civil Procedure 56(c) authorizes summary judgment if no genuine issue exists regarding any material fact and the moving party is entitled to judgment as a matter of law. The moving party must show an absence of an issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Once the moving party does so, the non-moving party must go beyond the pleadings and designate specific facts showing a genuine issue for trial. Id. at 324. The court does "not weigh the evidence or determine the truth of the matter, but only determines whether there is a genuine issue for trial." Balint v. Carson City, 180 F.3d 1047, 1054 (9th Cir 1999). A " 'scintilla of evidence,' or evidence that is 'merely colorable' or 'not significantly probative,' " does not present a genuine issue of material fact. United Steelworkers of Am. v. Phelps Dodge Corp., 865 F.2d 1539, 1542 (9th Cir), cert denied, 493 U.S. 809, 110 S. Ct. 51, 107 L. Ed. 2d 20 (1989) (emphasis in original, citation omitted).

The substantive law governing a claim or defense determines whether a fact is material. T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 631-32 (9th Cir 1987). The court must view the inferences drawn from the facts "in the light most favorable to the nonmoving party." Id. at 631 (citation omitted). Thus, reasonable doubts about the existence of a factual issue should be resolved against the moving party. Id. at 630-31. However, when the non-moving party's claims are factually "implausible, that party must come forward with more persuasive evidence than would otherwise be [required] ...." California Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466, 1468 (9th Cir 1987), cert denied, 484 U.S. 1006, 108 S. Ct. 698, 98 L. Ed. 2d 650 (1988) (citation omitted). "No longer can it be argued that any disagreement about a material issue of fact precludes the use of summary judgment." Id. "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 106 S. Ct. at 2552.

III. General Principles of Insurance Coverage Law

***3** "An insurance policy is interpreted according to the plain meaning a layperson would ordinarily give it unless the parties used a word or phrase in a technical sense or it has special meaning due to usage." Employers Mut. Cas. Co. v. Philadelphia Indem. Ins. Co., 169 Cal. App. 4th 340, 348, 86 Cal. Rptr. 3d 383, 390 (2008). "Ambiguities or uncertainties are resolved against the insurance company so that, if feasible, the policy will indemnify the loss to which the insurance relates. These rules exist to protect the insured's reasonable expectation of coverage." Id. " '[A]lthough exclusions are construed narrowly and must be proven by the insurer, the burden is on the insured to bring the claim within the basic scope of coverage, and (unlike exclusions) courts will not indulge in a forced construction of the policy's insuring clause to bring a claim within the policy's coverage.' " Waller v. Truck Ins. Exch., Inc., 11 Cal. 4th 1, 16, 44 Cal. Rptr. 2d 370, 376-77 (1995) (quoting Collin v. Am. Empire Ins. Co., 21 Cal. App. 4th 787, 803, 26 Cal. Rptr. 2d 391, 398-99 (1994)).

IV. Analysis

Among the arguments raised in Zurich's Motion for Summary Judgment is Zurich's contention that Niagara's claims in this action are barred by the Policy's one-year contractual suit limitation provision. That provision provides:

> SUIT AGAINST THE COMPANY
>
> No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless the Insured has fully complied with all the provisions of this Policy. Legal action must be started within (12) twelve months after the date of direct physical loss or damage to Covered Property or to other property as set forth herein.
>
> If under the laws of the jurisdiction in which the property is located, such twelve months' limitation is invalid, then, any such legal action needs to be started within the shortest limit of time permitted by such laws.

(ZAIC_000556.) According to Zurich, Niagara's claim accrued no later than the three-week period beginning on June 29, 2015, when Niagara destroyed the water and bottles in Pennsylvania as part of the Far Away Springs Recall. By the time Niagara tendered its claim arising out of the Far Away Springs Recall to Zurich on December 2, 2016, more than 16 months had passed since "the date of direct physical loss or damage" to Niagara's water and bottles. Another eight months elapsed between Zurich's last denial of the claim on May 16, 2018, and when Niagara commenced this action on January 18, 2019.

In their briefs in support of and in opposition to Zurich's summary judgment motion, both parties relied exclusively on California law, with Zurich contending that the one-year contractual suit limitation period is valid and enforceable under California law and bars Niagara's claims, while Niagara asserted that Zurich waived or is estopped from relying on the suit limitation period because it did not raise it in its denials of Niagara's claim or asserted it as a defense earlier in the litigation. Niagara also contended that Pitzer College v. Indian Harbor Ins. Co., 8 Cal. 5th 93, 251 Cal. Rptr. 3d 701 (2019), issued on August 29, 2019, precludes enforcement of the contractual suit limitation period because its application in this instance would violate a "fundamental public policy" of California by allowing an insurer to escape liability for an otherwise covered claim based on technical conditions within the insurance policy without the insurer having to establish actual prejudice from the insured's untimely suit.

Because the Policy's suit limitation provision references the "laws of the jurisdiction in which the property is located" to assess the validity of the one-year limitation period, and it is undisputed that the water and bottles were located in Pennsylvania when they were lost or destroyed, the Court ordered the parties to file supplemental briefs addressing the applicability of Pennsylvania law to the suit limitation provision and whether California law applied notwithstanding the Policy's reference to the law of the jurisdiction in which the property is located. In their supplemental briefs, Niagara took the position that California law applied, but that Pennsylvania law would also not bar its claim. Zurich asserted that Pennsylvania law applied and, like the law of California, does not require the insurer to establish prejudice to enforce a one-year suit limitation provision, and that Niagara's suit is therefore untimely under the laws of both California and Pennsylvania.

***4** To the extent the Policy's suit limitation provision references the law of the jurisdiction in which the property is located, and will not enforce the one-year limitation period if that period would be invalid under that jurisdiction's laws, that provision could be considered a choice of law clause requiring a choice of law analysis. "In determining the enforceability of a choice of law provision in a diversity action, a federal court applies the choice of law rules of the forum state, in this case California." Hatfield v. Halifax PLC, 564 F.3d 1177, 1182 (9th Cir. 2009). " 'If the parties state their intention in an express choice-of-law clause, California courts ordinarily will enforce the parties' stated intention ....' " Id. (quoting Frontier Oil Corp. v. RLI Ins. Co., 153 Cal. App. 4th 1436, 1450 n.7, 63 Cal. Rptr. 3d 816, 827 n.7 (2007)). "Once it determines the parties' intention, a California state court will next analyze whether: (1) the chosen jurisdiction has a substantial relationship to the parties or their transaction; or (2) any other reasonable basis for the choice of law provision exists. If either one of those tests is met, then a California court will enforce the provision unless the chosen jurisdiction's law is contrary to California public policy." Id. (citations omitted). "If ... there is a fundamental conflict with California law, the court must then determine whether California has a 'materially greater interest than the chosen state in the determination of the particular issue ....' If California has a materially greater interest than the chosen state, the choice of law shall not be enforced, for the obvious reason that in such circumstance we will decline to enforce a law contrary to this state's fundamental policy." Nedlloyd Lines B.V. v. Superior Court, 3 Cal. 4th 459, 466, 11 Cal. Rptr.

2d 330, 334 (1992) (quoting Restatement (Second) of Coflict of Laws § 187(2)).

While the Policy's suit limitation provision's reference to the law of the jurisdiction within which the property is located appears to express an intent to apply that jurisdiction's law concerning the timeliness of a suit against the insurer, the Court acknowledges that the provision is not clearly identified as a choice of law provision. Nor does the Policy otherwise appear to contain a specific choice of law provision. But in these circumstances, where the Policy specifically states that the Policy's coverage "applies to all covered loss or damage that takes place worldwide," it is reasonable that the parties would choose the law of the jurisdiction in which the property is located to construe the suit limitation provision. (ZAIC_000511.) The Court therefore concludes that the chosen jurisdiction satisfies the requirement that it have a substantial relationship to the parties or "any other reasonable basis for the choice of law provision." Hatfield, 564 F.3d at 1182.

Relying on Pitzer College, Niagara contends that if Pennsylvania law would not require the insurer to establish prejudice, there would be a fundamental conflict between the laws of California and Pennsylvania. In Pitzer College, the California Supreme Court answered a certified question from the Ninth Circuit concerning an insurance policy's notice and consent provisions, and held that California's long-standing "notice-prejudice" rule, which requires an insurer to establish prejudice as a result of an insured's failure to comply with an insurance policy's notice provision for the insurer to escape liability for an otherwise covered claim, is a fundamental policy of California. See Pitzer College, 251 Cal. Rptr. 3d at 708-10. The California Supreme Court also concluded that for first-party insurance claims like those at issue in this action, an insurer must also establish prejudice to enforce an insurance policy's consent provision, and that this requirement is also a fundamental policy of California. See id. at 710-13. In reaching these conclusions, the California Supreme Court expressed concern "that strict enforcement of a notice provision permits the insurer 'to reap the benefits flowing from the forfeiture of the insurance policy' and that such an "inequitable forfeiture has consequences that fall not only on the insured but also on the general public." Id. at 711 (quoting Alcazar v. Hayes, 982 S.W.2d 845, 852 (Tenn. 1998)).

Although the California Supreme Court has now clarified that an insurer must establish prejudice to enforce the notice and consent provisions of first party insurance policies, and that requiring prejudice in such circumstances is a fundamental policy of California law, California's courts, including the California Supreme Court, have never extended the notice-prejudice rule to the contractual suit limitation provisions found in insurance policies. See State Farm Fire & Cas. Co. v. Superior Court, 210 Cal. App. 3d 604, 612, 258 Cal. Rptr. 413, 418 (1989) ("Regarding prejudice, no California decision requires a showing of prejudice to enforce a statute of limitations.... The courts require no showing of prejudice to enforce a statute of limitations, in insurance cases or otherwise."); see also Scottsdale Ins. Co. v. Essex Ins. Co., 98 Cal. App. 4th 86, 97, 119 Cal. Rptr. 2d 62, 71 (2002) ("Scottsdale cites no case and we find none requiring a showing of prejudice outside the notice-cooperation clause context."). Specifically, because the one-year limitation period is statutorily mandated in California's standard form fire insurance policy, that clause "is deemed consistent with public policy as established by the Legislature." Prudential-LMI Commercial Ins. v. Superior Court, 51 Cal. 3d 674, 684, 274 Cal. Rptr. 387, 293 (1990); see also id. at 682, 274 Cal. Rptr. at 392 (citing Cal. Ins. Code § 2071).

***5** As a matter of California law, "the affirmative defense based on the statute of limitations should not be characterized by courts as either 'favored' or 'disfavored.' The two public policies identified above — the one for repose and the other for disposition on the merits — are equally strong, the one being no less important or substantial than the other." Norgart v. Upjohn Co., 21 Cal. 4th 383, 396, 87 Cal. Rptr. 2d 453, 462 (1999). The California Supreme Court has specifically held in a case involving the application of an insurance policy's suit limitation provision that it approaches "the issue of the statute of limitations defense in this case with no policy predisposition favoring either side." Prudential-LMI, 26 Cal. 4th at 1149, 113 Cal. Rptr. 2d at 75. "Statutes of limitations are upheld regardless of hardship or of the underlying merits of the claim. The occasional loss of a meritorious claim is the legislatively prescribed price to be paid for 'the orderly and timely processing of litigation.' " State Farm, 210 Cal. App. 3d at 612, 258 Cal. Rptr. at 418 (quoting Sanchez v. South Hoover Hosp., 18 Cal. 3d 93, 103, 132 Cal. Rptr. 657, 664 (1976)).

The Court therefore concludes that California does not have a fundamental policy preventing an insurer from relying on a one-year contractual suit limitation provision even when an insurer cannot establish that it suffered prejudice as a result of an insured's failure to file a suit against an insurer

within one year of the inception of the insured's loss. Indeed, California law enforces one-year contractual suit limitation provisions contained in insurance policies without having to establish prejudice. See Keller v. Fed. Ins. Co., 765 F. App'x 271, 273 (9th Cir. 2019) ("The loss in this case occurred in November or December 2012, when Keller and Yaney noticed the cupping of their floors. And even if we were to assume that the loss did not occur until July 2013, when Keller and Yaney decided that the cupping issue would not resolve itself over time, they were still late in submitting their claim to Federal in September 2014.... But the December 10, 2015 complaint was still time-barred by the LAAU's suit limitation provision because Keller and Yaney waited over a year after the loss occurred before even filing their claim with Federal."); State Farm, 210 Cal. App. 3d at 612, 258 Cal. Rptr. At 418.

Finally, even if enforcing a one-year contractual suit limitation provision somehow conflicted with a fundamental policy of California, California does not have a "materially greater interest" than Pennsylvania in the determination of a coverage dispute involving property located in Pennsylvania, particularly where, as here, the insurance policy at issue is a "global" policy obtained by a sophisticated insured for "worldwide" coverage. (ZAIC_499 & ZAIC_511.) For these reasons, a choice of law analysis supports the adoption of the law of Pennsylvania to the Policy's one-year contractual suit limitation provision for Niagara's claim for damage or loss to property located in Pennsylvania.

Like California, under Pennsylvania law, "[i]t is well-settled that a contractual provision limiting the time for commencement of suit on an insurance contract to a period shorter than that provided by an otherwise applicable statute of limitations is valid if reasonable." Lyons v. Nationwide Ins. Co., 567 A.2d 1100, 1102 (Pa. Super. Ct. 1989); see also Lardas v. Underwriters Ins. Co., 231 A.2d 740, 741-43 (Pa. 1967) (enforcing insurance policy's one-year contractual limitation provision). Also like California, Pennsylvania applies the notice-prejudice rule to the notice provisions contained in insurance policies. See Brakeman v. Potomac Ins. Co., 371 A.2d 193 (Pa. 1977). In Hospital Support Servs., Ltd. v. Kemper Grp., Inc., 889 F.2d 1311 (3d Cir. 1989), the Third Circuit "predicted" that the Pennsylvania Supreme Court would not expand the notice-prejudice rule to include contractual suit limitation provisions. See id. at 1316-17; see also Mail Quip, Inc. V. Allstate Ins. Co., 386 F. Supp. 3d 433, 439 (E.D. Pa.2019) ("Neither the Supreme Court nor the Superior Court of Pennsylvania has since addressed the Third Circuit's holding in Hospital Support Services."); id. at 440 ("[A]s Defendant is not required to show prejudice to rebut against the suit limitation provision, and Plaintiff's breach of contract claim is untimely, Count I is dismissed."); Prime Medica Assocs. v. Valley Forge Ins. Co., 970 A.2d 1149, 1156 (Pa. Super. Ct. 2009) ("An insurer is not required to show prejudice when seeking enforcement of a suit limitation provision."); Petraglia v. Am. Motorists Ins. Co., 424 A.2d 1360, 1364 (Pa. Super. Ct. 1981) ("We note the unbroken line of authorities upholding the contractual limitation clause has continued even after Brakeman and Diamon [v. Penn Mut. Fire Ins. Co., 372 A.2d 1218 (Pa. Super. Ct. 1977)]. We believe that courts should be reluctant to overrule such well settled principles where to do so would vitiate a legislatively approved provision of a standard fire insurance policy. Moreover, if such a change is to be made, we believe that the decision is more appropriately left to our Supreme Court. Consequently, we hold that the lower court did not err in finding the one-year suit limitation clause to be valid and enforceable absent waiver or estoppel.").

***6** Therefore, under either Pennsylvania or California law, the Policy's one-year contractual suit limitation provision is enforceable without Zurich having to establish that it suffered prejudice as a result of Niagara failing to file its suit within the limitation period. Nor do Niagara's waiver and estoppel arguments resurrect its otherwise time-barred claim. Indeed, where an insured did not even tender a claim within the suit limitation period, there can be no waiver or estoppel, because the claim is time barred before the insurer ever received notice of the claim and therefore could not have relinquished a known right or done anything that would cause an insured to believe that it could delay commencing a suit. See Prime Medica, 970 A.2d at 1157 ("The insured must present evidence establishing 'reasonable grounds for believing that the time limit would be extended' or that the insurer would not strictly enforce the suit limitation provision." (quoting Petraglia, 424 A.2d at 1364)); id. at 1151, 1157-58 (rejecting waiver and estoppel arguments where insured did not tender claim until after the expiration of the one-year contractual suit limitation period); Petraglia, 424 A.2d at 1364-65 (affirming summary judgment in favor of insurer and rejecting insured's waiver and estoppel arguments); see also Keller, 765 F. App'x at 273 ("Equitable estoppel and waiver are also inapplicable in the present case. '[C]onduct by the insurer after the limitation period has run—such as failing to cite the limitation provision when it denies the claim, failing to advise the insured of the existence of the limitation provision, or failing to specifically plead the time bar as a defense—cannot, as a matter of law, amount to a waiver or estoppel.' All of the alleged

statements by [the insurer's] coverage counsel] ... were made in 2015, well after the limitations period had already expired. Accordingly, the district court did not abuse its discretion in concluding that [coverage counsel's] statements did not give rise to any waiver or equitable estoppel by [the insurer].” (quoting Prudential-LMI, 51 Cal. 3d at 690 n.5, 274 Cal. Rptr. At 397 n.5)). This conclusion is supported by the fact that Zurich's communications with Niagara repeatedly stated that Zurich's coverage position reserved all of Zurich's rights and defenses, including provisions in the Policy that Zurich did not cite to, and that no waiver or estoppel was intended or could be inferred. Moreover, Zurich preserved its suit limitation provision defense in its Answer, when it asserted its third, fifth, and eighth affirmative defenses to “rely upon all sections of the Policy,” alleged that Niagara's claims fail “to the extent Plaintiff failed to comply with the terms and conditions of the Policy,” and referenced the statute of limitations. (See Docket No. 13.)

The Court therefore concludes that Niagara's breach of contract and declaratory judgment claims are barred by the Policy's contractual suit limitation provision because Niagara did not commence this action until more than a year after it suffered its loss. Indeed, Niagara did not even tender its claim until more than one year after that loss. As a result, Zurich did not waive and cannot be estopped from asserting the Policy's suit limitation provision as a defense to Niagara's claims. Additionally, because Niagara did not even provide notice of its claim until after the expiration of the one-year suit limitation period, equitable tolling does not apply to resurrect Niagara's time-barred claims for the period during which Zurich investigated Niagara's claim. See Prudential-LMI, 51 Cal. 3d at 691-93, 274 Cal. Rptr. at 398-99 (tolling the one-year suit provision during the period when the insurer is investigating the claim). Because Niagara's breach of contract claim fails, Niagara's claim for a breach of the implied covenant of good faith and fair dealing, which relies on Niagara's wrongful denial of the claim, also fails. See Mail Quip, 388 F. Supp. 3d at 440-42 (rejecting bad faith claim under Pennsylvania law where insured did not commence action within the contractual suit limitation period); Love v. Fire Ins. Exch., 221 Cal. App. 3d 1136, 1151, 271 Cal. Rptr. 246, 254 (1990) (“Where an insured's right to collect policy benefits is already time barred, he may not resurrect his rights merely be resubmitting a claim after the lapse of the limitations period.”); id. at 1151-52, 271 Cal. Rptr. at 255 (“[T]here are at least two separate requirements to establish breach of the implied covenant: (1) benefits due under the policy must have been withheld; and (2) the reason for withholding benefits must have been unreasonable or without proper cause. Here, the undisputed facts show the threshold requirement is absent. No benefits due were withheld or delayed, because the [insured's] claim to benefits was already time barred.”); Lawrence v. W. Mut. Ins. Co., 204 Cal. App. 3d 565, 574-75, 251 Cal. Rptr. 319, 324-25 (1988) (rejecting bad faith claim arising out of the contractual relationship under California law as time-barred as a result of the suit limitation period).

Conclusion

For all of the foregoing reasons, the Court grants Zurich's Motion for Summary Judgment because each of Niagara's claims is barred by the contractual suit limitation provision contained in the Policy under the laws of both Pennsylvania and California. The Court declines to address the parties' remaining arguments and denies Niagara's Motion for Partial Summary Judgment. The Court will issue a Judgment consistent with this Order.

IT IS SO ORDERED.

All Citations

Slip Copy, 2019 WL 6729756