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Gallagher Sharp Newsflash: Limitation of Action Clause Enforceable

On August 23, 2011, the Supreme Court of Ohio decided *Dominish v. Nationwide Ins. Co.*, Slip Opinion No. 2011-Ohio-4102, and held that a homeowner's insurer could enforce a limitation of action clause in its policy. A storm caused a tree to fall and damaged the insured's house. The insurer twice issued a check to the insured in the same amount, and the insured on both occasions wrote "void" on the checks and returned them to the insurer, deeming the amount insufficient to cover the damage to his home. The insured filed suit against the insurer nearly two years after the loss. The insurer sought summary judgment based upon the following one-year limitation of action provision in the policy: "Any action must be started within one year after the date of loss or damage." The trial court granted the insurer summary judgment. The Lake County court of appeals reversed, concluding that the policy language was ambiguous. Alternatively the court reasoned that the insurer, by its actions, had waived its right to enforce the limitation of action provision. In a unanimous decision authored by Justice Pfeiffer, the Supreme Court of Ohio reversed the judgment of the court of appeals and reinstated summary judgment for the insurer. The Supreme Court held that the policy language was not ambiguous and the insurer did not waive its right to enforce the limitation of action clause.

Justice Pfeiffer acknowledged that the word "start" in the clause "is not commonly used to indicate the commencement of a lawsuit" but that "does not mean it refers to something else when it is used in a provision entitled 'Suit Against Us'", and that "though the word 'action' can refer to virtually anything done by a person, there is no reason to think it refers to anything other than a lawsuit when used as part of a two-sentence provision entitled 'Suit Against Us.'"

The Supreme Court distinguished *Hounshell v. Am. States Ins. Co.* (1981), 67 Ohio St.2d 427. In that case the court explained that an insurer may waive a limitation of action provision by recognizing liability or holding out a reasonable hope of adjustment, and by doing so, induce the insured to delay filing a lawsuit until after the contractual period had expired. In the *Dominish* case, though, the insurer asserted the limitation of action clause "at every possible instance" so the insured was not induced to forbear filing suit by anything the insurer did.

The Court's opinion can be accessed at: <http://www.supremecourtofohio.gov/rod/docs/pdf/0/2011/2011-ohio-4102.pdf>

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