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Property insurance policies often include a limitation-of-action clause, which sets a time limitation for suit against the insurer. The Ohio Supreme Court recently upheld the enforcement of a one year limitation-of-action clause in a homeowners policy in *Dominish v. Nationwide Ins. Co.*, Slip Opinion No. 2011-Ohio-4102. To obtain a copy of the decision, click the link below.

<http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2011/2011-Ohio-4102.pdf>

The facts of the case are as follows. A storm caused a tree to fall and damage a house owned by Mr. Dominish. The house was insured under a homeowners policy issued by Nationwide. After the claim was submitted Nationwide assessed the damage and issued a check to the insured on two occasions. Both times the insured received the check, he wrote the word “void” on it, and returned the check to Nationwide, as he believed the amount of the check was insufficient to cover his damages.

Nationwide stated in writing it was not liable beyond the amount of the check it had sent to Dominish. The letter explained why a portion of the claim was not covered, and referred to the limitation-of-action provision of the policy, which stated, “any action must be started within one year after the date of loss or damage.”

The insured sued Nationwide almost two years after the date of loss. The trial court granted Nationwide’s Motion for Summary Judgment based upon the insured’s failure to file suit within the one year time limit set forth in the policy. The Court of Appeals reversed, concluding the policy language was ambiguous, and further that Nationwide, by its actions, had waived its right to enforce the one-year limitation clause.

In a unanimous decision, the Ohio Supreme Court reversed the Court of Appeals, and entered judgment in favor of Nationwide. The Court first determined the limitation-of-action clause was not ambiguous, and thus enforceable. The Court also determined Nationwide by its actions had not waived its right to enforce the limitation-of-action clause. The Court explained Nationwide had admitted partial liability, offered a check to cover its liability, and denied further liability. The Court concluded the insured was not induced to forbear filing suit by anything Nationwide did, and on this basis Nationwide did not waive its right to enforce the limitation-of-action clause.

Should you have any further questions regarding the decision or its implications, please do not hesitate to contact our firm.

Yours truly,

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