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CASE SUMMARY: DO NOT CONFUSE AN MGA WITH AN INSURER

An insured's application to add insurers in place of a managing general agent was granted despite the expiry of the limitation period

Insurance law – Property insurance – Limitation of actions – Estoppel – Practice – Summary judgments

Raubvogel v. Can-Sure Underwriting, [2023] O.J. No. 2786, 2023 ONSC 3705, Ontario Superior Court of Justice, June 21, 2023, J. Josefo Associate J.

The insured sued for coverage after a water pipe burst at the insured's property. The insured originally named the managing general agent ("MGA") of his policy as the defendant, instead of the subscribing insurers. The insured applied to amend the claim to name the subscribing insurers. The defendant MGA brought a cross application seeking summary judgment on the basis that the action was brought beyond the one-year contractual limitation period, and on the basis that the MGA was not the correct defendant. The court found that the parties conducted their affairs as if there was a two-year limitation period. The summary judgment application was dismissed because the insured raised a genuine issue for trial as to whether estoppel applied.

Regarding the insured's application to name the insurers, the MGA argued that the application was brought beyond the two-year statutory limitation period and that the subscribing insurers were plainly listed in the policy. The court noted that the missing of a limitation period was not a factor to decide if a misnomer existed. The initial correspondence from an independent adjuster to the insured stated that the MGA was the insurer. It was not until the defence was filed that the MGA's position that it was not an insurer was unambiguously stated. The notice provision in the policy provided that notice to the insurers could be provided to the MGA. In the context of the contradictory information, the delay to correct the misnomer was not inordinate or unexplained, and the insurers were added as defendants.

This case was digested by [Joe Antifaev](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Joe Antifaev at jantifaev@harpergrey.com.