

remedies by means of which a release can be evoked for the sole purpose of redrafting it and achieving what the parties intended but did not formulate very well. I have never seen a case like this, and the AM. JUR.2D article entitled *Releases* does not discuss it. // Quinn

Louisiana's Peremption Statute for Civil Actions against Insurance Intermediaries Runs from the Date of Performance (No More than Three Years), From the Date of Discovery of the Error (One Year), or From the Date When the Mistake Should Have Been Discovered (One Year)

No Extensions Are Permitted

Burk Property Investments, LLC v. Alliance Insurance Agency, ___ So.2d ___, 2008 WL 4191138 (La. App. Sept. 10, 2008).

Case at a Glance

Burk bought insurance through Alliance for two properties it owned in Orleans Parish on or about June 13, 2005. Burk wanted flood insurance. Burk claimed that it was told that it indeed had exactly that. When Katrina came through on August 29, 2005, the buildings were damaged. Burk filed claims, and they were denied. Burk sued Alliance and the individual agent on August 29, 2006. The defendants moved for summary judgment on several grounds. The court granted it on the grounds of peremption by a statute, R.S. 9:5606, ¶¶ A & D, which is entitled *Actions for Professional Insurance Agent Liability*. Under that statute, Burk had no rights upon which to sue Alliance or its insurance agent/employee after mid-June 2006.

Summary of Decision

The facts here are very simple and have already been summarized. What is important is the nature of peremption and the applicable statute.

Peremption. According to BLACK'S LAW DICTIONARY, the term "peremption" in Civil Law—meaning Napoleonic Codes and Louisiana Law—means "a period of time fixed by statute for the existence of a right. If the right is not exercised during this period, it is extinguished." The verb "to preempt" means "to

quash, do away with, or extinguish." In the common law tradition, the term "peremptory challenge" comes from this phrase. The difference between a statute of limitation and a statute of peremption is that the former does not wipe out a right; it simply bars a specific remedy.

Louisiana Statute. To understand what happened here, it is necessary to review R.S. 9:5606.A. Remember, this statute is designed for structuring lawsuits against insurance brokers. Paragraph A states that no action of any kind for damages can be brought against "any insurance agent, broker, solicitor, or other similar licensee under" Louisiana law which arises out of the engagement of any such person and involving any alleged "act, omission, or neglect," unless it is brought within one year of the date upon which it is "discovered or should have been discovered." However, these one year intervals may not stretch out longer than three years after the date of the performance of the act, omission or neglect. (Of course, these dates are not always easy to fix definitely and with certainty for omissions.)

Paragraph B of R.S. 9:5606 is also relevant. It states that the preemptive periods specified in 9:5606 are enacted in accordance with other significant sections of the Civil Code, in particular Articles 3458 and 3461 and therefore "may not be renounced, interrupted, or suspended." As was stated in another case, "once that preemptive period begins to run, it is not subject to *contra non valentum*." *Huffman v. Goodman*, 784 So.2d 718, 725 (La. App. 2001). According to BLACK'S LAW DICTIONARY, this Latin phrase is to be understood in terms of the "Doctrine of *Contra Non Valentum*," which is "the rule that a limitation or prescriptive period does not begin to run against a plaintiff who is unable to act, usually because of the defendant's culpable act, such as concealing material information that would give rise to the plaintiff's claim." In other words, under the law of Louisiana, someone treated wrongfully by an insurance intermediary needs to discover the error, no matter what, "or else"!

In this case, the plaintiff argued that he did not and could not discover the agent's failure to obtain flood insurance until after Katrina came through and he was denied coverage by other insurers. The court rejected this position because documents issued with or after both new policies—one for each of the two locations—had a blank line and no monetary amount listed as cost for flood insurance. This alone gave Burk

a basis for reasonable discovery. His failure not to notice this triggered the running of the peremption statute.

Comment

(1) According to the court, there is a similar statute for legal malpractice claims which works roughly speaking in the same way. *Atlas Iron and Metal Co. v. Asby*, 918 So.2d 1205 (La. App. 2006). Burk tried to make a point on the basis of this statute, but got nowhere.

(2) Defendants in insurance lawsuits, such as insurers and/or brokers, often argue that plaintiff-insureds or plaintiff-insurance-customers must read and understand the policies at issue. (Arguably this argument works only with insurers and not with intermediaries.) In *Burk*, the court applied a must-read rule; it does not necessarily apply to insurance policies—although it might.

(3) Clearly this case will not have any precedential life outside Louisiana. // Quinn

cochlear implant in her left ear, and the procedure restored her hearing in that ear. Her treating physician later determined that it was medically necessary for plaintiff to have second cochlear implanted in her right ear so that she could localize sound and communicate more effectively. However, plaintiff's health insurer refused to authorize the procedure, asserting that it was investigational. The insurer reaffirmed its decision in an internal appeals process. Plaintiff filed an action alleging breach of her insurance contract and bad faith, naming the insurer and its parent companies as defendants. The suit alleged that the parent companies established claims handling policies for their subsidiary insurance companies. The main parent company owned 100 percent of the stock in the other companies and shared common corporate officers with the secondary parent company. The parent companies moved for dismissal, arguing that they had no privity of contract with plaintiff's insurer and therefore were protected against liability for the insurer's conduct. The trial court granted the motion, finding no basis for piercing the corporate veil and holding the parent companies responsible for the insurer's actions. A state intermediate court reversed and ruled that plaintiff had stated a viable claim against the parent companies. In so ruling, the intermediate court ruled that the corporate veil could be pierced if the parent companies controlled the insurer and exercised that control to commit fraudulent, illegal, unjust or inequitable acts.

The Ohio Supreme Court reversed the intermediate court's decision. The court took this opportunity to re-examine the level of misconduct that is required in order to pierce the corporate veil and hold a parent corporation liable for the acts of a subsidiary corporation. In a prior decision—*Belvedere Condominium Unit Owners' Association v. R.E. Roark Companies*, 617 N.E.2d 1075 (Ohio 1993)—the court had adopted a rule permitting the corporate veil to be pierced where a parent corporation uses its control of a subsidiary to commit "fraud or an illegal act." Subsequent decisions from Ohio's lower courts—including the intermediate court in the instant case—had interpreted this standard broadly to include unjust or inequitable acts that do not rise to the level of fraud or illegality. The state supreme court concluded that this view went too far and failed to properly limit corporate piercing to exceptional

Bad Faith

Health Insurer's Parent Company Is Not Subject To Liability for Subsidiary's Bad Faith in Handling Claim

Bad Faith Does Not Warrant Piercing of Corporate Veil

Dombroski v. Wellpoint, Inc., ___ N.E.2d ___, 2008 WL 4443943 (Ohio Sept. 30, 2008)

Case at a Glance

An insurance company's parent corporation may not be held liable for a subsidiary's bad faith in handling a claim.

Summary of Decision

Plaintiff suffered from complete deafness. She underwent a medical procedure for implantation of a