

# Client Alert

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## **Eighth Circuit Upholds Policyholder's \$2.8 Million Award, Rejects Insurers' "Bold" Timeliness Defense as Contrary to Arkansas Law**

The Eighth Circuit Court of Appeals recently affirmed a poultry and pet food manufacturer's \$2.8 million jury award for damage to its warehouses following a snowstorm, agreeing that the policy's one-year suit limitations provision was void as a matter of Arkansas law. In *Simmons Foods, Inc. v. Industrial Risk Insurers*, No. 15-3755, 2017 WL 2945420 (8th Cir. July 11, 2017), a unanimous appellate panel held that under Arkansas law, the issue of timeliness of a lawsuit is "a matter of procedure and not of substantive law" and, therefore, Arkansas' five-year statutory limitations period applied to trump a shorter one-year contractual limitation in the manufacturer's insurance policies, concluding that those provisions were void and unenforceable. The ruling not only highlights the significant impact choice of law can have on the outcome of an insurance recovery action, but it also shows that policyholders should thoroughly evaluate each asserted coverage defense, particularly where the insurer makes sweeping generalizations regarding the applicable rule of law.

### **Background**

In 2011, Simmons Food, Inc. made a claim under two property insurance policies for damage sustained following a heavy snowfall. The insurers denied the claim in part, and when the parties could not reach an agreement as to coverage for the contested amounts, Simmons filed suit in Arkansas (where Simmons is headquartered) seeking \$3.5 million for the alleged damage.

Arguing that Oklahoma law (the location of the damaged properties) applied, the insurers moved to dismiss based on policy provisions requiring that any action against the insurers be brought within one year of the date of loss, since Simmons filed suit more than 31 months after the snowstorm. Simmons disagreed with the carriers' position, arguing that Arkansas law applied and that the one-year contractual limitation periods were void.

The Arkansas district court agreed with Simmons, denying the insurers' motion to dismiss and holding that "the timeliness of the suit [was] a procedural matter" and thus "governed by the law of the forum." The case proceeded to trial, where a jury found that Simmons was entitled to \$2.8 million in damages, among other relief, arising from the insurers' breach of the policies. The insurers appealed on numerous grounds, including that the district court erred in applying Arkansas law to deny their motion to dismiss.

### **July 11 Opinion**

In its July 11 opinion, the Eighth Circuit rejected the insurers' timeliness defense, based largely on the unique statutory protections afforded by Arkansas law, which holds that policyholders have five years to sue an insurer for breach of a property insurance policy, and that "[a]ny . . . provision in the policy . . . requiring the action to be brought within any shorter time or be barred is void." Thus, under Arkansas law, Simmons' coverage lawsuit filed nearly three years after the loss occurred was timely under the Arkansas statute despite the one-year limitations period in the policy.

Recognizing that the underlying district court sitting in diversity would apply the forum's choice-of-law principles, the appellate court first addressed "whether the timeliness issue is procedural or substantive in nature" because any procedural issues would be resolved under Arkansas law. Regardless of the majority view of other courts outside of Arkansas, the Eighth Circuit was compelled to follow the Arkansas Supreme Court's holding that "[t]he period of limitation in which suit may be filed . . . is a matter of procedure and not of substantive law," which the court noted was "from the only court whose classification controls." Where the issue of timeliness of a lawsuit is procedural in nature, the Arkansas district court had correctly applied Arkansas law to the suit limitations provisions at issue. Therefore, the court "affirm[ed] the district court's decision to deny the insurers' motion to dismiss, because the limitations provision is procedural and is void under Arkansas law."

Notably, the court took the insurers to task for their sweeping assertion that "[e]very court to consider the enforceability of a suit limitation provision in an insurance contract has treated it as a substantive, not procedural issue." The court first recognized that the insurers "offer[ed] scant support for this bold claim" where they only offered two non-binding, out-of-circuit, district-level decisions in support of their position.

More importantly, the court rejected the insurers' suggestion that the limitations question should be influenced by what the insurers contended was the current majority view among courts nationwide, rather than by binding (but allegedly outdated) state court precedent, emphasizing that "[w]hen dealing with an issue of state law we are bound by rulings on that issue from the state's highest court. We are faced with an issue of Arkansas law, and the Arkansas Supreme Court has decided that issue, so we are bound by that decision regardless of whether we think it wise or in accordance with the supposed national trend."

### Takeaways

The *Simmons* case involved an Arkansas policyholder attempting to recover against its insurers in an Arkansas federal court. The Arkansas legislature had enacted a statutory provision protecting precisely the kind of claims at issue in *Simmons* by permitting lawsuits for recovery against insurers for breach of property insurance policies up to five years after a loss, irrespective of any shorter limitations period in the policy.

State law varies greatly with respect to choice-of-law questions, but the insurers in *Simmons* nevertheless attempted to avoid application of policyholder-friendly state law in federal court by broadly asserting that "every court" to consider the relevant issue had supported the insurers' position. As the Eighth Circuit correctly recognized, however, this was not only an incorrect statement, but also "directly conflicted" with "the only court whose classification controls."

The Eighth Circuit is not alone in refusing to fashion new state law, as other federal courts similarly have criticized insurers where they have taken positions that are either unsupported or in conflict with state law. See, e.g., *William Beaumont Hosp. v. Fed. Ins. Co.*, 552 F. App'x 494, 501 (6th Cir. 2014) (rejecting insurer defense where the insurer relied "only on cases not on point" and had not identified any binding authority supporting its position); *U.S. Bank Nat'l Ass'n v. Indian Harbor Ins. Co.*, No. 12-CV-3175 PAM/JSM, 2014 WL 3012969, at \*3 (D. Minn. July 3, 2014) (rejecting insurers' argument that "restitution" is uninsurable as a matter of Delaware law where "[t]he Insurers have failed to cite, and the Court cannot locate, any Delaware authority deeming restitution uninsurable" and "neither Delaware statute nor case law expressly precludes insurance coverage for settlements constituting restitution").

While the unique Arkansas state law protections afforded to the policyholder in *Simmons* may not be equally applicable in other suit limitations cases, the decision serves as a reminder to carefully analyze questions of state law and to challenge any insurer conclusion regarding the state of the law that is not adequately supported by relevant, binding precedent.

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