

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SUPERVALU, INC.,

Plaintiff and Appellant,

v.

WEXFORD UNDERWRITING
MANAGERS, INC., et al.,

Defendants and Respondents.

B206501

(Los Angeles County
Super. Ct. No. LC076533)

ORDER MODIFYING OPINION

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on June 3, 2009, be modified as follows:

1. On page 3, the second sentence of the first full paragraph, the word “in” is to be inserted between the words “the same as” and “the TIG policies” so that the sentence reads:

The self-insured retention and coverage were essentially the same as in the TIG policies.

2. On page 5, the second sentence of the second full paragraph, line 3, the words “two new” are deleted so that the sentence reads:

The proposed pleading alleged a new claim against TIG for refusing to pay benefits, and claims against Wexford for failing to disclose Continental’s intention to change its interpretation of the policy language and for failing to report claims to TIG and Continental.

3. On page 5, third full paragraph, third sentence, before the sentence beginning “Continental waived all issues” add “To overcome some procedural deficiencies in its motion” so that the sentence is modified to read as follows:

To overcome some procedural deficiencies in its motion, Continental waived all issues set forth in its declaratory relief cause of action with the exception of the meaning of the word “occurrence.”

4. The paragraph commencing at the bottom of page 6 with “Supervalu argues that” and continuing at the top of page 7 with “from asserting a new” is modified to read as follows:

Supervalu argues that the phrase “per occurrence” in the policies refers to a claim which results in one award or compromise and release; Continental and TIG are estopped from asserting a new interpretation; the trial court erred when it granted TIG’s motion for summary adjudication as to Lecky; the trial court’s ruling as to Continental was procedurally improper; Wexford should not be immunized from liability; prejudgment interest cannot accrue during the time a creditor prevents payment of the debt; and the trial court should have allowed Supervalu to amend to allege negligent misrepresentation against Wexford. We turn to these issues.

There is no change in the judgment.