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SUMMARY
September 7, 2023

2023COA77

No. 22CA1305, *Reynolds v. Great Northern* — Insurance — Regulation of Insurance Companies — Required Disclosures — Liability; Limitation of Actions — General Limitation of Actions One Year — Actions for Any Penalty

A division of the court of appeals considers, as a matter of first impression, the statute of limitations period for section 10-3-1117, C.R.S. 2023. Based on the plain language of the statute, the division holds that (1) section 10-3-1117 imposes a penalty and is therefore subject to the one-year statute of limitations under section 13-80-103(1)(d), C.R.S. 2023; and (2) a cause of action for the penalty imposed by section 10-3-1117(3) accrues on the thirty-first day after an insurer receives a potential claimant's written request for an insured's policy information. The division also rejects the

application of the continuing violation doctrine to claims for penalties under section 10-3-1117.

Because the district court correctly computed the limitations period under the applicable statute of limitations, the division affirms the district court's dismissal of the cause of action for penalties.

Court of Appeals No. 22CA1305
City and County of Denver District Court No. 22CV31245
Honorable A. Bruce Jones, Judge

Maria Victoria Reynolds,

Plaintiff-Appellant,

v.

Great Northern Insurance Company,

Defendant-Appellee.

JUDGMENT AFFIRMED

Division D
Opinion by CHIEF JUDGE ROMÁN
Freyre and Tow, JJ., concur

Prior Opinion Announced July 20, 2023, WITHDRAWN

OPINION PREVIOUSLY ANNOUNCED AS “NOT PUBLISHED PURSUANT TO
C.A.R. 35(e)” ON JULY 20, 2023, IS NOW DESIGNATED FOR PUBLICATION

Announced September 7, 2023

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¶ 1 Plaintiff, Maria Victoria Reynolds, appeals the district court’s judgment dismissing her complaint against defendant, Great Northern Insurance Company (Great Northern), on the grounds that it is barred by the statute of limitations found in section 13-80-103(1)(d), C.R.S. 2023. We affirm.

I. Background

¶ 2 For purposes of the C.R.C.P. 12(b)(5) motion and ruling we are reviewing, the following facts are undisputed. Reynolds was involved in a car accident with an insured of Great Northern. On November 4, 2020, she sent a formal written request to Great Northern for the insured’s policy information, pursuant to section 10-3-1117(2)(a), C.R.S. 2023. Great Northern’s registered agent, CT Corporation, received the request on November 17, 2020. Great Northern did not comply until April 22, 2022.

¶ 3 On May 4, 2022, Reynolds filed a complaint in the district court seeking statutory penalties based on Great Northern’s failure to provide the required disclosures within the timeframe set forth in section 10-3-1117(2)(a). Reynolds asserted Great Northern was required to provide the requested policy information within thirty days of receiving the request or face a statutory penalty of \$100 per

day accrued thereafter, which began on December 18, 2020, the thirty-first day after receipt of the formal request.

¶ 4 Great Northern moved to dismiss Reynolds’ complaint under C.R.C.P. 12(b)(5), asserting her claim for penalties was barred by the one-year statute of limitations applicable to “all causes of action for any penalty” found in section 13-80-103(1)(d).

¶ 5 The district court agreed with Great Northern, concluding that section 10-3-1117(3) expressly created a cause of action to recover penalties; therefore, the one-year statute of limitations in section 13-80-103(1)(d) applied; and Reynolds’ claim accrued, and the limitations period began to run, on the thirty-first day — the day following the statutory period allowed to produce the required disclosures. Because Reynolds asserted her claim after the one-year statute of limitations had expired, the district court dismissed her complaint as time barred.

II. Analysis

¶ 6 Reynolds contends that reversal is required because the district court erred when it found that a claim for penalties under section 10-3-1117 accrues on the thirty-first day after an insurer fails to provide the required disclosures. Instead, she argues the

claim accrues the day after an insurer complies with a request. We disagree with Reynolds and therefore affirm.

A. Standard of Review and Applicable Law

¶ 7 The purpose of a C.R.C.P. 12(b)(5) motion to dismiss for failure to state a claim upon which relief can be granted is to test the formal sufficiency of the plaintiff’s complaint. *Wagner v. Grange Ins. Ass’n*, 166 P.3d 304, 306 (Colo. App. 2007). Although defendants are generally prohibited from raising a statute of limitations defense under C.R.C.P. 12(b)(5), an exception exists “where the bare allegations of the complaint reveal that the action was not brought within the required statutory period.” *SMLL, L.L.C. v. Peak Nat’l Bank*, 111 P.3d 563, 564 (Colo. App. 2005).

¶ 8 We review a district court’s decision to grant a C.R.C.P. 12(b)(5) motion and its legal conclusions as to which statute of limitations applies de novo. *Fiscus v. Liberty Mortg. Corp.*, 2014 COA 79, ¶ 13, *aff’d on other grounds*, 2016 CO 31. We also review questions of statutory interpretation de novo. *Poudre Sch. Dist. R-1 v. Stanczyk*, 2021 CO 57, ¶ 13.

¶ 9 To effectuate the legislature’s intent, “we look to the entire statutory scheme in order to give consistent, harmonious, and

sensible effect to all of its parts, and we apply words and phrases in accordance with their plain and ordinary meanings.” *Id.* (citation omitted). We must “avoid constructions that would render any of the statutory language superfluous or that would lead to illogical or absurd results.” *Harvey v. Cath. Health Initiatives*, 2021 CO 65, ¶ 16.

B. Section 10-3-1117

¶ 10 Section 10-3-1117(2)(a) requires all motor vehicle insurers to disclose to prospective claimants a statement setting forth (1) the name of the insurer; (2) the name of the insured party; (3) the applicable liability limits; and (4) a copy of the policy for each known policy of the insured party that may be relevant to the claim. An insurer that fails to timely disclose the required information is “liable to the requesting claimant for damages in an amount of one hundred dollars per day, beginning on and including the thirty-first day following the receipt of the claimant’s written request.” § 10-3-1117(3).

C. Discussion

1. Section 10-3-1117 Imposes a Statutory Penalty

¶ 11 Prior to the enactment of section 10-3-1117, there was no statutory requirement that an insurer disclose its insured's policy information to a claimant. Only after litigation related to the underlying tort commenced could a claimant obtain a copy of the opposing party's insurance policy. C.R.C.P. 26(a)(1)(D). This area of law changed with the passage of section 10-3-1117.

¶ 12 Effective January 1, 2020, section 10-3-1117 imposes an obligation on insurers to promptly disclose policy information to potential claimants for the express purpose of creating "transparency in the insurance claims process" by ensuring claimants access to "accurate and reliable information about the amount of legal liability coverage available for a claim." § 10-3-1101(2), C.R.S. 2023.

¶ 13 Insurers that violate the disclosure requirements of section 10-3-1117(2)(a) are "liable to the requesting claimant for damages in an amount of one hundred dollars per day." § 10-3-1117(3). This "penalty" accrues until the insurer provides the required information. *Id.* Further, the \$100 per day penalty is imposed

irrespective of any actual damages to the claimant. The passage of time, not actual harm, dictates the amount of the penalty. Indeed, the penalty applies even if the claimant is subsequently found to be entitled to no damages in the underlying automobile accident. See § 10-3-1117(5). Noncompliant insurers are also responsible for attorney fees and costs incurred by claimants in enforcing “the penalty.” § 10-3-1117(3).

2. The One-Year Statute of Limitations for Penalties Applies to Section 10-3-1117

¶ 14 As the parties appear to agree, Colorado imposes a one-year statute of limitations on actions for penalties. “All actions for any penalty or forfeiture of any penal statutes,” regardless of “the theory upon which suit is brought, or against whom suit is brought, shall be commenced within one year after the cause of action accrues, and not thereafter.” § 13-80-103(1)(d).

¶ 15 As discussed, section 10-3-1117 is an action for penalties. Therefore, the one-year statute of limitations for penalties applies.

3. The Accrual Date is the Thirty-First Day After Receipt of the Request

¶ 16 Pursuant to section 13-80-108(9), C.R.S. 2023, “[a] cause of action for penalties shall be deemed to accrue when the

determination of overpayment or delinquency for which such penalties are assessed is no longer subject to appeal.” The determination of delinquency — here, not providing the insurance policy — is statutorily established as the thirty-first day after the written request is received by the insurer’s registered agent.

§ 10-3-1117(3). The statute does not provide an appeal process to challenge the imposition or amount of the penalty — it is \$100 per day, irrespective of the reasons for any delay. Therefore, a cause of action requesting the penalty imposed by section 10-3-1117(3) accrues on the thirty-first day after the insurer receives the written request for information and a copy of the policy.

D. Application

¶ 17 Here, the thirty-first day after Great Northern received Reynolds’ request was December 18, 2020. The applicable one-year statute of limitations, therefore, expired on December 18, 2021. Because Reynolds did not file this lawsuit until May 4, 2022, the district court correctly held that Reynolds’ claim was barred by the statute of limitations.

¶ 18 For another practical reason, we reject Reynolds’ proposed statutory construction that a claim for penalties under section

10-3-1117 accrues the day after an insurer complies with a request: that day may never occur. Under Reynolds' construction, a noncompliant insurer could escape liability for penalties by never complying with a claimant's request, as the claim would not accrue, and therefore not exist, until a disclosure occurred. *See Frohlick Crane Serv., Inc. v. Mack*, 182 Colo. 34, 37-38, 510 P.2d 891, 893-94 (1973) (A court should never "interpret a statute in such a manner as to frustrate the intent of the legislature.").

¶ 19 Reynolds also cites *Rooftop Restoration, Inc. v. American Family Mutual Insurance Co.*, 2018 CO 44, in support of her position. However, the holding in *Rooftop Restoration* is consistent with our decision. In *Rooftop Restoration*, our supreme court held that, unlike section 10-3-1117, "the one-year statute of limitations found in section 13-80-103(1)(d), C.R.S. (2017), does not apply to an action brought under section 10-3-1116(1) because section 10-3-1116(1) is not an 'action[] for any penalty or forfeiture of any pending statute[]' within the meaning of section 13-80-103(1)(d)." *Rooftop Restoration*, ¶ 1 (alterations in original). Conversely, we have concluded today that section 10-3-1117 does provide a cause

of action for a penalty within the meaning of section 13-80-103(1)(d).

¶ 20 Finally, we reject Reynolds' argument that, even if the one-year statute of limitations applies to her claim, the limitations period was tolled under the continuing violation doctrine. According to Reynolds, each day of an insurer's noncompliance with the disclosure requirements is to be considered a new, distinct violation with a separate date of accrual, under the continuing violation doctrine. We disagree and expressly decline to apply the continuing violation doctrine here. Its application has been limited to discrimination cases in Colorado. *Polk v. Hergert Land & Cattle Co.*, 5 P.3d 402, 405 (Colo. App. 2000); *see also Harmon v. Fred S. James & Co. of Colo.*, 899 P.2d 258, 261 (Colo. App. 1994) (rejecting application of the continuing violation doctrine to insurance bad faith claims).

¶ 21 Because the district court correctly computed the limitations period under the applicable statutes and correctly concluded that Reynolds filed her complaint after the limitations period expired, we affirm the dismissal of her claim.

III. Disposition

¶ 22 The judgment of the district court is affirmed.

JUDGE FREYRE and JUDGE TOW concur.