STATE OF MICHIGAN

COURT OF APPEALS

FEDERATED MUTUAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

EMPIRE FIRE AND MARINE INSURANCE COMPANY and CORRIGAN OIL CORPORATION,

Defendants-Appellees.

UNPUBLISHED
January 12, 2006

No. 264553
Ingham Circuit Court
LC No. 04-000807-CK

Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendants. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

On November 27, 2002, defendant Corrigan's employee crashed an oil truck into a building insured by plaintiff. Defendant Empire, who had first priority in the matter as insurer of the vehicle, MCL 500.3125, admitted liability for the loss and agreed to accept plaintiff's investigation and determination of the extent of that liability. However, the investigation dragged on without resolution, and in May 2004, Empire announced that it would deny the claim, citing the one-year statute of limitations that applies to property protection insurance claims. See MCL 500.3145(2).

Plaintiff filed suit shortly thereafter. Recognizing that the applicable period of limitations had run, plaintiff asserted in its complaint that it had not acted sooner because of Empire's "intentional and negligent representations." It invoked equitable estoppel as a basis for tolling the statute of limitations. Whether equitable estoppel applied was the only issue argued at the hearing on defendants' motion for summary disposition. The trial court concluded that equitable estoppel did not apply, so it granted the motion.

Plaintiff's sole issue on appeal is whether the trial court erred in concluding that defendants were not equitably estopped from relying on the one-year statute of limitations. We review de novo a trial court's decision on a motion for summary disposition as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "Equitable estoppel arises

where one party has knowingly concealed or falsely represented a material fact, while inducing another's reasonable reliance on that misapprehension, under circumstances where the relying party would suffer prejudice if the representing or concealing party were subsequently to assume a contrary position." *Adams v Detroit*, 232 Mich App 701, 708; 591 NW2d 67 (1998).

In its brief on appeal, plaintiff admits that its insured denied Empire's agent access to the premises for investigative purposes, and that its own agent "embarked on what turned out to be an exhaustive investigation with an uncooperative insured." Therefore, this case is distinguishable from *Cincinnati Ins Co v Citizens Ins Co*, 454 Mich 263, 270-273; 562 NW2d 648 (1997), in which our Supreme Court held that estoppel applied when an automobile insurer induced a subrogated real property insurer to delay presenting its claim until all aspects of the loss were thoroughly assessed. Although the automobile insurer in both cases assured the subrogated property insurer that it was liable and was merely awaiting documentation to process the claim, here Empire did not make any special requests that fostered delay in the investigation or application for benefits. Instead, Empire urged plaintiff to expedite the loss's investigation by requesting submission of the claim, and it even initiated its own investigation to advance the matter. Nevertheless, plaintiff's insured thwarted Empire's investigation. Therefore, unlike the plaintiff in *Citizens*, *supra*, plaintiff points to no delay encouraged by Empire and instead concedes that the delays were attributable to its own investigating agents and its insured.

Moreover, plaintiff fails to demonstrate any promise or affirmation by Empire besides its initial admission of liability, and fails to explain how the admission of liability was a deceptive assertion blatantly designed to induce plaintiff to forestall filing suit until the limitations period lapsed. *Adams*, *supra*. Empire stated truthfully that it was the insurer primarily liable for the claim; it did not falsely state that it would never use the statute of limitations as a defense. The fact that an insurer admits liability in the first instance (and even pays a portion of a claim) does not deprive the insurer of the protections in MCL 500.3145. See *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 584; 702 NW2d 539 (2005). To hold otherwise would discourage insurers from commendably and conscientiously admitting liability for fear that the admission might subject them to interminable delay while a claimant roots out every possible basis for loss or patiently waits for its losses to develop. To avoid this uncertainty, insurers would more readily deny liability or stand mute at the outset and force the increased expenses and delays of litigation onto claimants. The statute reflects that the Legislature prefers a policy that fosters efficient claims processing over inestimably prolonged investigations and bureaucratic shuffling, and plaintiff fails to demonstrate any deceptive practice by Empire that would compel us to override that policy decision. *Id*. As the trial court stated, "Rather than acting to forestall the plaintiff, the defendant gave the plaintiff the ability to control how and when the total claim would be determined." Because plaintiff delayed the pursuit of its claim for reasons not attributable to Empire, the trial court correctly allowed Empire to invoke the statute of limitations.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot