



Neutral

As of: May 7, 2015 8:41 PM EDT

Dietz Int'l Pub. Adjusters of Cal., Inc. v. Evanston Ins. Co.

United States Court of Appeals for the Ninth Circuit

April 11, 2013, **Submitted, Pasadena, California; April 15, 2013, Filed

No. 11-56267

Reporter

515 Fed. Appx. 680; 2013 U.S. App. LEXIS 7491; 2013 WL 1557930

DIETZ INTERNATIONAL PUBLIC ADJUSTERS OF CALIFORNIA, INC., a California corporation, Plaintiff - Appellant, v. EVANSTON INSURANCE COMPANY, an Illinois corporation, Defendant - Appellee.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [**1] Appeal from the United States District Court for the Central District of California. D.C. No. 2:09-cv-06662-MMM-E. Margaret M. Morrow, District Judge, Presiding.

[*Dietz Int'l Pub. Adjusters of Cal., Inc. v. Evanston Ins. Co.*, 796 F. Supp. 2d 1197, 2011 U.S. Dist. LEXIS 75080 \(C.D. Cal., 2011\)](#)

Disposition: AFFIRMED.

Core Terms

voluntary payment, settling a claim, summary judgment, late notice, insurer

Counsel: For DIETZ INTERNATIONAL PUBLIC ADJUSTERS OF CALIFORNIA, INC., a California corporation, Plaintiff - Appellant: John Arthur Belcher, JOHN A. BELCHER LAW OFFICES, Pasadena, CA.

For EVANSTON INSURANCE COMPANY, an Illinois corporation, Defendant - Appellee: Alan H. Barbanel, Esquire, Attorney, Stephen Lamar Cope, Counsel, Stephen D. Treuer, Esquire, Attorney, Barbanel & Treuer, P.C., Los Angeles, CA; John Hochhausler, MANNING & KASS ELLROD RAMIREZ, TRESTER LLP Los Angeles, CA.

Judges: Before: BERZON, TALLMAN, and M. SMITH, Circuit Judges.

Opinion

[*680] MEMORANDUM *

Plaintiff Dietz International Public Adjusters of California, Inc. appeals the district court's grant of summary judgment to defendant Evanston Insurance Co. in Dietz's diversity action seeking reimbursement of payments made to settle claims against it. We have jurisdiction under *28 U.S.C. § 1291*. We review de novo, [*Hansen v. Dep't of Treasury*, 528 F.3d 597, 600 \(9th Cir. 2007\)](#), [**2] and we affirm.

The statutory language of *Section 554 of the California Insurance Code* is unambiguous and does not preclude Evanston from enforcing a provision in Dietz's professional liability insurance policy that bars Dietz from making voluntary payments to settle claims against it. See [*Insua v. Scottsdale Ins. Co.*, 104 Cal. App. 4th 737, 743, 129 Cal. Rptr. 2d 138 \(2002\)](#), review denied, No. S112788 (Feb 25, 2003) (holding that insurer could assert voluntary payments defense even when it failed to promptly assert a late notice defense).

[*681] On its face, *Section 554* provides only for the waiver of an insurer's late notice defense, a substantively different defense than the voluntary payments defense that Evanston asserted at summary judgment. See *id.* Because Dietz failed to demonstrate that Evanston intentionally relinquished its right to raise its voluntary payments defense, Evanston has not waived that defense under California law. See [*Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 31, 44 Cal. Rptr. 2d 370, 900 P.2d 619 \(1995\)](#).

AFFIRMED.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

* This disposition is not appropriate for publication and is not precedent except as provided by [9th Cir. R. 36-3](#).