State of New York
Court of Appeals

To be argued Wednesday, March 21, 2018

No. 39 Contact Chiropractic, P.C. v New York City Transit Authority

Contact Chiropractic brought this action against the New York City Transit Authority (NYCTA) in January 2007, seeking to recover $1,503.40 in no-fault insurance benefits for medical services provided in 2001. Contact Chiropractic submitted its claims for those benefits to NYCTA from March through August 2001. NYCTA, a self-insured public benefit corporation, moved to dismiss the suit as time-barred. It contended that, because it does not maintain an insurance policy, its obligation to pay no-fault benefits is imposed by Insurance Law section 5103 and the action should be subject to the three-year statute of limitations for claims based on statutory liability. Contact Chiropractic argued that its suit was timely because it was subject to the six-year statute of limitations for claims based on contractual liability, which applies to no-fault claims against insurance companies.

Queens Civil Court denied NYCTA's motion to dismiss. Noting "a split of authority" in the Appellate Division, with the First Department applying a three-year limitations period and the Second Department a six-year limitations period, the court said no-fault matters "are arguably contractual in nature, even when dealing with a self-insured entity such as the NYCTA," and it applied the six-year statute of limitations.

Appellate Term for the 2nd, 11th and 13th Judicial Districts affirmed, saying, "It stands to reason that the intent of the legislature was not to impose a lesser duty on a public carrier which posts a bond than the duty imposed upon an owner who purchases insurance. In Mandarino v Travelers Prop. Cas. Ins. Co. (37 AD3d 775 [2007]), the Second Department recognized the existence of a six-year statute of limitations on claims arising from wrongfully withheld first-party no-fault benefits. The Mandarino court reasoned: "'as a matter of strict statutory interpretation, where the plaintiff's action is based upon *both* a "contractual obligation or liability" *and* upon a "liability, penalty or forfeiture created or imposed by statute," the longer, six-year statute of limitations ... is applied....'"

The Appellate Division, Second Department affirmed, saying an action to recover no-fault benefits from a self-insured defendant "is subject to a six-year statute of limitations, since the claim is essentially contractual, as opposed to statutory, in nature...."

NYCTA says, "As a self-insurer, the New York City Transit Authority does not write insurance policies or otherwise enter into insurance contracts with its passengers. Thus, the Transit Authority's obligation to provide No-Fault benefits to the [plaintiff's patient] would not exist but for the provisions of the Vehicle and Traffic Law, Insurance Law § 5103, and the No-Fault Regulations." It says, "The motion court and the Appellate Division erred in applying a six-year statute of limitations based on their finding that the dispute is 'contractual in nature' despite the undisputed fact that there is no contractual relationship between the parties. The Appellate Term similarly erred in affirming the lower court's order based on the determination that because insurers and self-insurers are subject to the same liability under the No-Fault law they must also be subject to the same statute of limitations." It says "self-insurers' liability under the No-Fault law is imposed strictly by statute while insurers' obligations are based in contract."

For appellant NYCTA: Agnes Neiger, Manhattan (212) 776-1808
For respondent Contact Chiropractic: Tricia Smith, Lake Success (516) 358-6900

State of New York
Court of Appeals

To be argued Wednesday, March 21, 2018

No. 40 People, by Schneiderman v Credit Suisse Securities (USA) LLC

Attorney General Eric Schneiderman brought this action for injunctive relief and damages against Credit Suisse Securities (USA) LLC and related companies under the Martin Act (General Business Law article 23-A) and under Executive Law section 63(12), alleging that Credit Suisse engaged in fraudulent and deceptive acts in the creation and sale of residential mortgage-backed securities in 2006 and 2007. Credit Suisse moved to dismiss the action as untimely, contending it was subject to the three-year statute of limitations for claims based on liability created or imposed by statute. The Attorney General argued the action was subject to a six-year limitations period, and was therefore timely, because it sought relief for fraud recognized at common-law prior to the enactment of the statutes. Supreme Court denied the motion to dismiss the suit, applying a six-year limitations period.

The Appellate Division, First Department affirmed in a 3-2 decision, adhering to its prior determination that the six-year statute of limitations in CPLR 213(8), which governs common-law fraud, applies to Martin Act actions alleging investor fraud. It also cited its 2016 ruling that fraud claims by the Attorney General under Executive Law section 63(12) are subject to the residual six-year statute of limitations in CPLR 213(1) because the section "does not create any liability nonexistent at common law, at least under the court's equitable powers." The majority said, "The conduct targeted under section 63(12) parallels the conduct covered under the Martin Act's definition of fraud in that both the Martin Act and section 63(12) target wrongs that existed before the statutes' enactment, as opposed to targeting wrongs that were not legally cognizable before enactment.... Contrary to the dissent's conclusion, the complaint sets forth the elements of common-law fraud, including scienter or intent, reliance, and damages."

The dissenters argued, "These claims, as pleaded, fall within the category of claims that would not exist but for the statutes, creating a new basis for liability, not a new remedy, and the three-year statute of limitations of CPLR 214(2) applies.... [U]nlike an action for common-law fraud..., to state a claim under [the Martin Act] the Attorney General does not have to allege scienter or intentional fraud, or reliance ... and liability would be imposed based solely on a misrepresentation or an omission of a material fact.... Accordingly..., the claim would not exist at common law because it makes 'actionable conduct that does not necessarily rise to the level of fraud'.... Accordingly, as the Attorney General is seeking relief under a broader definition of fraud created by the statutes, defendants' motion to dismiss the Martin Act and Executive Law [section] 63(12) claims as time-barred under CPLR 214(2) should be granted."

For appellants Credit Suisse et al: Richard W. Clary, Manhattan (212) 474-1000
For respondent Attorney General: Solicitor General Barbara D. Underwood (212) 416-8022

State of New York
Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Wednesday, March 21, 2018

No. 41 Matter of FMC Corporation v New York State Department of Environmental Conservation

FMC Corporation owns a 103-acre facility in the Village of Middleport, Niagara County, where it produced pesticides and herbicides for more than 60 years and, in the process, contaminated the facility itself and surrounding areas with arsenic, lead, and other toxic chemicals. The FMC facility has been listed on New York's registry of hazardous waste disposal sites since 1980. In 2010, at the direction of the state Department of Environmental Conservation (DEC) and federal authorities, FMC submitted a report proposing eight remedial plans, known as corrective measure alternatives (CMAs), to address contamination on about 500 acres of off-site residential, commercial, and school properties. In 2012, the DEC proposed a more thorough cleanup plan, CMA 9, which mandated that arsenic remaining in the soil could not exceed 20 parts per million. FMC challenged the proposal. In 2013, after a public comment period, DEC issued a "final statement of basis" in which it formally selected CMA 9. FMC continued to dispute the decision. In 2014, the DEC advised FMC that, due to its "refusal" to implement CMA 9, the DEC would do the work at FMC's expense using the State Superfund.

FMC then brought this article 78 proceeding against the DEC, alleging the agency exceeded its authority in proceeding with the remedial work and that its selection of CMA 9 was arbitrary and capricious. Supreme Court granted DEC's motion to dismiss the suit as time-barred, finding it was commenced more than four months after the DEC's determination.

The Appellate Division, Third Department reversed, ruling the suit was timely based on a series of tolling agreements the parties executed as they tried to negotiate a voluntary cleanup plan. Turning to the merits, it said DEC "has the authority to undertake remedial work" under both title 9 and title 13 of Environmental Conservation Law (ECL) article 27, but neither provision permitted DEC's actions in this case. Under title 9, DEC's "authority to act exists where the hazardous waste is managed 'unlawfully in violation of [ECL] 27-0914,' i.e., without authorization.... But here, [DEC] explained in the statement of basis that [FMC] 'does not presently have an operating permit but is subject to what are called "interim status" requirements.' Thus, it appears that ... [FMC] was operating lawfully pursuant to its 'interim status'...." Under title 13, the court said, FMC "was entitled to ... an opportunity for a hearing prior to the issuance of an order directing [it] to implement CMA 9. As it turns out, [FMC] was not accorded an opportunity for a hearing to assert its challenge to CMA 9 and no implementation order was issued. Absent such an order, we must agree ... that [DEC's] determination that it was authorized to proceed with the remedial work based on [FMC's] 'refusal' to perform the work was arbitrary and capricious." It remitted the matter to DEC to provide a hearing.

The DEC argues that both title 9 and title 13 of ECL article 27 authorized it to remediate the site at FMC's expense using CMA 9. Under title 9, "'Interim status' ... does not mean a facility is 'operating lawfully' when it releases hazardous waste to the environment. It means only that the facility may operate prior to completing the permitting process. And the record here shows that FMC *unlawfully* released contaminants into the environment on multiple occasions.... Title 13 requires DEC to afford a hearing only when it issues an order identifying a responsible person and directing that party to clean up hazardous waste. DEC is not required to issue such an order when, as here, it undertakes a cleanup itself after making reasonable efforts to secure a voluntary agreement with the responsible person." It says a hearing under title 13 "is intended to give a party an opportunity to contest its responsibility for cleanup" and was not needed here, since "FMC does not contest its responsibility, but rather seeks only to challenge DEC's determination to adopt a particular remediation measure."

For appellant DEC: Assistant Solicitor General Frederick A. Brodie (518) 776-2317
For respondent FMC: David G. Mandelbaum, Philadelphia, PA (215) 988-7813