SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

AmTrust North America, Inc. v. Insurance Specialty Group LLC

AmTrust, 2025 NY Slip Op 06801 (Supreme Court of the State of New York Appellate Division First Department 2025) · No. Index No. 650020/24; Appeal No. 4920; Case No. 2024-05581 · Decided December 9, 2025

SUMMARY

The Appellate Division, First Department modified an order dismissing portions of AmTrust North America, Inc.'s breach of contract claim as time-barred. The court held that equitable estoppel could prevent the statute of limitations defense for alleged contractual breaches other than breaches of a fiduciary duty to disclose, while the continuing wrong doctrine did not revive time-barred disclosure-based claims.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Moulton, J.; González, J.; Rosado, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	December 9, 2025
DOCKET	Index No. 650020/24; Appeal No. 4920; Case No. 2024-05581
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendant's CPLR 3211(a)(5) motion to dismiss part of plaintiff's breach-of-contract claim as time-barred.
STANDARD OF REVIEW	On a CPLR 3211(a)(5) motion, the court accepts the complaint's allegations as true and affords the plaintiff all favorable inferences; dismissal is improper where the allegations sufficiently state a basis for equitable estoppel of the statute-of-limitations defense.
PRECEDENTIAL VALUE	Published opinion; precedential New York Appellate Division decision
PARTIES	AmTrust North America, Inc. v. Insurance Specialty Group LLC

TOPICS

breach of contract · statute of limitations · equitable relief · motions to dismiss · appellate procedure

PRACTICE AREAS

Contracts · Insurance · Civil Procedure · Appellate Procedure · Commercial Litigation · Remedies

QUESTIONS PRESENTED

1. Whether equitable estoppel prevented defendant from asserting a statute-of-limitations defense to contractual-breach claims based on alleged deficient underwriting, careless administration, improper policy servicing, and conflicts of interest.
2. Whether equitable estoppel also applied to contractual claims premised on the same alleged breaches of the fiduciary duty to disclose.
3. Whether the continuing-wrong doctrine revived otherwise time-barred breach-of-contract claims.

HOLDINGS

1. At the pleading stage, equitable estoppel applies because plaintiff sufficiently alleged that defendant's concealment of material facts forestalled plaintiff's ability to discover defendant's deficient administration of the asset protection program.
2. Equitable estoppel does not apply to the portion of the breach-of-contract claim premised on defendant's alleged breaches of its fiduciary duty to disclose because the alleged concealment is the same conduct forming the basis of the substantive claim.
3. The continuing-wrong doctrine did not revive plaintiff's time-barred claims; it preserves damages only for wrongs committed within the applicable limitations period.

KEY QUOTATIONS

> *"To the extent that Count One of the complaint is premised on contractual breaches by defendant, we hold that the doctrine of equitable estoppel is applicable."* ([*1])

> *"Equitable estoppel does not apply . . . where the misrepresentation or act of concealment underlying the estoppel claim is the same act forming the basis of the underlying substantive cause of action"* ([*1])

> *"Thus, even under this doctrine, plaintiff may only avail itself of claims arising within six years of the commencement of this action (taking into account any applicable COVID-19 tolling)."* ([*1])

FACTUAL BACKGROUND

AmTrust entered into a July 1, 2010 Managing Producer Agreement with Insurance Specialty Group to administer an asset protection program and issue commercial general liability and builder's risk insurance. The agreement required Insurance Specialty Group to perform its obligations as AmTrust's fiduciary, use its best efforts, and comply with underwriting guidelines. AmTrust alleged deficient underwriting, careless program administration, improper policy servicing, conflicts of interest, and concealment of known risks and losses, which AmTrust claimed it discovered only in 2022 after substantial losses accumulated.

PROCEDURAL HISTORY

AmTrust sued Insurance Specialty Group for alleged breaches of a Managing Producer Agreement relating to administration of an asset protection insurance program. Supreme Court, New York County, granted defendant's statute-of-limitations motion as to breaches occurring before May 19, 2017. The Appellate Division unanimously modified the order to deny the motion as to contractual breaches other than breaches of the fiduciary duty to disclose, and otherwise affirmed.

DISPOSITION

other

REMAND INSTRUCTIONS

The order was modified to deny defendant's CPLR 3211(a)(5) motion insofar as the breach-of-contract claim was based on breaches other than breaches of the fiduciary duty to disclose; the order was otherwise affirmed. No specific remand instructions were stated.

CASES CITED

- Zumpano v. Quinn, 6 N.Y.3d 666, 675 (2006)
- Gerzog v. Goldfarb, 206 A.D.3d 554, 555-556 (1st Dep't 2022)
- Local No. 4, Int'l Ass'n of Heat & Frost & Asbestos Workers v. Buffalo Wholesale Supply Co., Inc., 49 A.D.3d 1276, 1277-1278 (4th Dep't 2008)
- Knobel v. Shaw, 90 A.D.3d 493, 494-495 (1st Dep't 2011)
- Transport Workers Union of Am. Local 100 AFL-CIO v. Schwartz, 32 A.D.3d 710, 714 (1st Dep't 2006), leave dismissed, 7 N.Y.3d 922 (2006)
- Ganzi v. Ganzi, 183 A.D.3d 433, 434 (1st Dep't 2020)
- Henry v. Bank of Am., 147 A.D.3d 599, 601 (1st Dep't 2017)
- CWCapital Cobalt VR Ltd. v. CWCapital Invs. LLC, 195 A.D.3d 12, 20 (1st Dep't 2021)

OPINION

PER CURIAM.

AmTrust N. Am., Inc. v Insurance Specialty Group LLC (2025 NY Slip Op 06801) AmTrust N. Am., Inc. v Insurance Specialty Group LLC 2025 NY Slip Op 06801 Decided on December 09, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: December 09, 2025 Before: Manzanet-Daniels, J.P., Moulton, González, Rosado, Chan, JJ. Index No. 650020/24|Appeal No. 4920|Case No. 2024-05581| [*1]AmTrust North America, Inc., Plaintiff-Appellant, v Insurance Specialty Group LLC, Defendant-

Respondent. Holwell Shuster & Goldberg LLP, New York (Daniel M. Sullivan of counsel), for appellant.

Herrick, Feinstein LLP, New York (Sean E. O'Donnell of counsel), for respondent. Order, Supreme Court, New York County (Melissa A. Crane, J.), entered on or about August 21, 2024, which, to the extent appealed from as limited by the briefs, granted defendant's CPLR 3211(a)(5) motion to dismiss plaintiff's breach of contract claim (Count One) with respect to breaches that occurred before May 19, 2017, unanimously modified, on the law, to deny the motion to the extent the claim is based on breaches other than breaches of the fiduciary duty to disclose, and otherwise affirmed, without costs.

According to the complaint, on July 1, 2010, plaintiff entered into a Managing Producer Agreement (MPA) with defendant, which, among other things, tasked defendant with the administration of an asset protection program (APP) for the benefit of plaintiff.

The MPA also incorporated agreed-upon underwriting guidelines with which defendant was to comply in performing its APP functions for plaintiff's benefit. Pursuant to the APP, defendant was to issue, on plaintiff's behalf, commercial general liability and builder's risk insurance for residential general contractors, subcontractors, and others involved in residential construction.

Because plaintiff was relying on defendant's expertise and experience to administer the APP, the MPA required defendant to "perform its obligations as a fiduciary of" plaintiff and "use its best efforts to perform all acts necessary for the proper conduct of business on [plaintiff's] behalf." It further provided that a breach of defendant's fiduciary duties would constitute a "material breach" of the agreement.

As alleged, defendant breached its contractual obligations and duties over the course of the APP by failing to properly perform its underwriting duties, carelessly administering the APP, improperly servicing policies, and entering into policies on behalf of plaintiff based upon improper conflicts of interest. Plaintiff asserts that notwithstanding its fiduciary duty to disclose under the MPA, defendant repeatedly hid these known issues and conflicts from plaintiff.

It was only in 2022, after massive losses began to mount, that plaintiff discovered defendant's purported mismanagement. To the extent that Count One of the complaint is premised on contractual breaches by defendant, we hold that the doctrine of equitable estoppel is applicable. Plaintiff has sufficiently alleged, at this juncture, that defendant breached the MPA through its alleged failure to perform its underwriting duties, its careless administration of the APP, its improper servicing of policies, and its potential conflicts of interest.

Plaintiff separately alleged that under the MPA, defendant was required, yet failed, to disclose to plaintiff known risks of the APP, defendant's relationship with its warranty provider, and the likelihood that its losses relative to the premiums plaintiff received would far exceed what was expected. Accepting these allegations as true and according the complaint all favorable inferences, plaintiff has sufficiently alleged at this juncture that defendant forestalled plaintiff's ability to meaningfully uncover its deficient administration of the APP, and therefore, at this stage, defendant is equitably estopped from asserting a statute of limitations defense (see Zumpano v Quinn, 6 NY3d 666, 675 [2006]; Gerzog v Goldfarb, 206 AD3d 554, 555-556 [1st Dept 2022]; Local No. 4, Intl.

Assn. of Heat & Frost & Asbestos Workers v Buffalo Wholesale Supply Co., Inc., 49 AD3d 1276, 1277-1278 [4th Dept 2008]). Plaintiff has also sufficiently shown, at this stage, that defendant's purported concealment of facts in breach of its fiduciary duty to disclose constituted separate and distinct contractual breaches that were not coterminous with the other enumerated breaches of the MPA forming the basis of plaintiff's breach of contract cause of action.

Accordingly, contrary to defendant's position, the specific acts of concealment underlying plaintiff's estoppel claim are not the same acts at the heart of the vast majority of contractual breaches underlying plaintiff's substantive cause of action (cf. Knobel v Shaw, 90 AD3d 493, 494-495 [1st Dept 2011]; Transport Workers Union of Am. Local 100 AFL-CIO v Schwartz, 32 AD3d 710, 714 [1st Dept 2006], lv dismissed 7 NY3d 922 [2006]).

Nevertheless, as plaintiff concedes, equitable estoppel is not applicable to that portion of plaintiff's breach of contract claim premised on defendant's alleged breaches of its fiduciary duty to disclose (see Schwartz, 32 AD3d at 714 ["Equitable estoppel does not apply... where the misrepresentation or act of concealment underlying the estoppel claim is the same act forming the basis of the underlying substantive cause of action"]).

Nor does the continuing wrong doctrine revive these claims insofar as they are time-barred. Although it is true that the continuing wrong doctrine "tolls the running of the statute of limitations where there is a series of independent, distinct wrongs" (see Ganzi v Ganzi, 183 AD3d 433, 434 [1st Dept 2020]), it saves claims for recovery of damages only "to the extent of wrongs committed within the applicable statute of limitations" (Henry v Bank of Am., 147 AD3d 599, 601 [1st Dept 2017]; accord CWCapital Cobalt VR Ltd. v CWCapital Invs.

LLC, 195 AD3d 12, 20 [1st Dept 2021]). Thus, even under this doctrine, plaintiff may only avail itself of claims arising within six years of the commencement of this action (taking into account any applicable COVID-19 tolling). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 9, 2025

PER CURIAM.

AmTrust N. Am., Inc. v Insurance Specialty Group LLC (2025 NY Slip Op 06801) AmTrust N. Am., Inc. v Insurance Specialty Group LLC 2025 NY Slip Op 06801 Decided on December 09, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: December 09, 2025 Before: Manzanet-Daniels, J.P., Moulton, González, Rosado, Chan, JJ. Index No. 650020/24|Appeal No. 4920|Case No. 2024-05581| [*1]AmTrust North America, Inc., Plaintiff-Appellant, v Insurance Specialty Group LLC, Defendant-Respondent. Holwell Shuster & Goldberg LLP, New York (Daniel M. Sullivan of counsel), for appellant.

Herrick, Feinstein LLP, New York (Sean E. O'Donnell of counsel), for respondent. Order, Supreme Court, New York County (Melissa A. Crane, J.), entered on or about August 21, 2024, which, to the extent appealed from as limited by the briefs, granted defendant's CPLR 3211(a)(5) motion to dismiss plaintiff's breach of contract claim (Count One) with respect to breaches that occurred before May 19, 2017, unanimously modified, on the law, to deny the motion to the extent the claim is based on breaches other than breaches of the fiduciary duty to disclose, and otherwise affirmed, without costs.

According to the complaint, on July 1, 2010, plaintiff entered into a Managing Producer Agreement (MPA) with defendant, which, among other things, tasked defendant with the administration of an asset protection program (APP) for the benefit of plaintiff.

The MPA also incorporated agreed-upon underwriting guidelines with which defendant was to comply in performing its APP functions for plaintiff's benefit. Pursuant to the APP, defendant was to issue, on plaintiff's behalf, commercial general liability and builder's risk insurance for residential general contractors, subcontractors, and others involved in residential construction.

Because plaintiff was relying on defendant's expertise and experience to administer the APP, the MPA required defendant to "perform its obligations as a fiduciary of" plaintiff and "use its best efforts to perform all acts necessary for the proper conduct of business on [plaintiff's] behalf." It further provided that a breach of defendant's fiduciary duties would constitute a "material breach" of the agreement.

As alleged, defendant breached its contractual obligations and duties over the course of the APP by failing to properly perform its underwriting duties, carelessly administering the APP, improperly servicing policies, and entering into policies on behalf of plaintiff based upon improper conflicts of interest. Plaintiff asserts that notwithstanding its fiduciary duty to disclose under the MPA, defendant repeatedly hid these known issues and conflicts from plaintiff.

It was only in 2022, after massive losses began to mount, that plaintiff discovered defendant's purported mismanagement. To the extent that Count One of the complaint is premised on contractual breaches by defendant, we hold that the doctrine of equitable estoppel is applicable.

Plaintiff has sufficiently alleged, at this juncture, that defendant breached the MPA through its alleged failure to perform its underwriting duties, its careless administration of the APP, its improper servicing of policies, and its potential conflicts of interest.

Plaintiff separately alleged that under the MPA, defendant was required, yet failed, to disclose to plaintiff known risks of the APP, defendant's relationship with its warranty provider, and the likelihood that its losses relative to the premiums plaintiff received would far exceed what was expected. Accepting these allegations as true and according the complaint all favorable inferences, plaintiff has sufficiently alleged at this juncture that defendant forestalled plaintiff's ability to meaningfully uncover its deficient administration of the APP, and therefore, at this stage, defendant is equitably estopped from asserting a statute of limitations defense (see Zumpano v Quinn, 6 NY3d 666, 675 [2006]; Gerzog v Goldfarb, 206 AD3d 554, 555-556 [1st Dept 2022]; Local No. 4, Intl.

Assn. of Heat & Frost & Asbestos Workers v Buffalo Wholesale Supply Co., Inc., 49 AD3d 1276, 1277-1278 [4th Dept 2008]). Plaintiff has also sufficiently shown, at this stage, that defendant's purported concealment of facts in breach of its fiduciary duty to disclose constituted separate and distinct contractual breaches that were not coterminous with the other enumerated breaches of the MPA forming the basis of plaintiff's breach of contract cause of action.

Accordingly, contrary to defendant's position, the specific acts of concealment underlying plaintiff's estoppel claim are not the same acts at the heart of the vast majority of contractual breaches underlying plaintiff's substantive cause of action (cf. Knobel v Shaw, 90 AD3d 493, 494-495 [1st Dept 2011]; Transport Workers Union of Am. Local 100 AFL-CIO v Schwartz, 32 AD3d 710, 714 [1st Dept 2006], lv dismissed 7 NY3d 922 [2006]).

Nevertheless, as plaintiff concedes, equitable estoppel is not applicable to that portion of plaintiff's breach of contract claim premised on defendant's alleged breaches of its fiduciary duty to disclose (see Schwartz, 32 AD3d at 714 ["Equitable estoppel does not apply... where the misrepresentation or act of concealment underlying the estoppel claim is the same act forming the basis of the underlying substantive cause of action"]).

Nor does the continuing wrong doctrine revive these claims insofar as they are time-barred. Although it is true that the continuing wrong doctrine "tolls the running of the statute of limitations where there is a series of independent, distinct wrongs" (see Ganzi v Ganzi, 183 AD3d 433, 434 [1st Dept 2020]), it saves claims for recovery of damages only "to the extent of wrongs committed within the applicable statute of limitations" (Henry v Bank of Am., 147 AD3d 599, 601 [1st Dept 2017]; accord CWCapital Cobalt VR Ltd. v CWCapital Invs.

LLC, 195 AD3d 12, 20 [1st Dept 2021]). Thus, even under this doctrine, plaintiff may only avail itself of claims arising within six years of the commencement of this action (taking into account any applicable COVID-19 tolling). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 9, 2025

PER CURIAM.

AmTrust N. Am., Inc. v Insurance Specialty Group LLC (2025 NY Slip Op 06801) AmTrust N. Am., Inc. v Insurance Specialty Group LLC 2025 NY Slip Op 06801 Decided on December 09, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: December 09, 2025 Before: Manzanet-Daniels, J.P., Moulton, González, Rosado, Chan, JJ. Index No. 650020/24|Appeal No. 4920|Case No. 2024-05581| [*1]AmTrust North America, Inc., Plaintiff-Appellant, v Insurance Specialty Group LLC, Defendant-Respondent. Holwell Shuster & Goldberg LLP, New York (Daniel M. Sullivan of counsel), for appellant.

Herrick, Feinstein LLP, New York (Sean E. O'Donnell of counsel), for respondent. Order, Supreme Court, New York County (Melissa A. Crane, J.), entered on or about August 21, 2024, which, to the extent appealed from as limited by the briefs, granted defendant's CPLR 3211(a)(5) motion to dismiss plaintiff's breach of contract claim (Count One) with respect to breaches that occurred before May 19, 2017, unanimously modified, on the law, to deny the motion to the extent the claim is based on breaches other than breaches of the fiduciary duty to disclose, and otherwise affirmed, without costs.

According to the complaint, on July 1, 2010, plaintiff entered into a Managing Producer Agreement (MPA) with defendant, which, among other things, tasked defendant with the administration of an asset protection program (APP) for the benefit of plaintiff.

The MPA also incorporated agreed-upon underwriting guidelines with which defendant was to comply in performing its APP functions for plaintiff's benefit. Pursuant to the APP, defendant was to issue, on plaintiff's behalf, commercial general liability and builder's risk insurance for residential general contractors, subcontractors, and others involved in residential construction.

Because plaintiff was relying on defendant's expertise and experience to administer the APP, the MPA required defendant to "perform its obligations as a fiduciary of" plaintiff and "use its best efforts to perform all acts necessary for the proper conduct of business on [plaintiff's] behalf." It further provided that a breach of defendant's fiduciary duties would constitute a "material breach" of the agreement.

As alleged, defendant breached its contractual obligations and duties over the course of the APP by failing to properly perform its underwriting duties, carelessly administering the APP, improperly servicing policies, and entering into policies on behalf of plaintiff based upon improper conflicts of interest. Plaintiff asserts that notwithstanding its fiduciary duty to disclose under the MPA, defendant repeatedly hid these known issues and conflicts from plaintiff.

It was only in 2022, after massive losses began to mount, that plaintiff discovered defendant's purported mismanagement. To the extent that Count One of the complaint is premised on contractual breaches by defendant, we hold that the doctrine of equitable estoppel is applicable. Plaintiff has sufficiently alleged, at this juncture, that defendant breached the MPA through its alleged failure to perform its underwriting duties, its careless administration of the APP, its improper servicing of policies, and its potential conflicts of interest.

Plaintiff separately alleged that under the MPA, defendant was required, yet failed, to disclose to plaintiff known risks of the APP, defendant's relationship with its warranty provider, and the likelihood that its losses relative to the premiums plaintiff received would far exceed what was expected. Accepting these allegations as true and according the complaint all favorable inferences, plaintiff has sufficiently alleged at this juncture that defendant forestalled plaintiff's ability to meaningfully uncover its deficient administration of the APP, and therefore, at this stage, defendant is equitably estopped from asserting a statute of limitations defense (see Zumpano v Quinn, 6 NY3d 666, 675 [2006]; Gerzog v Goldfarb, 206 AD3d 554, 555-556 [1st Dept 2022]; Local No. 4, Intl.

Assn. of Heat & Frost & Asbestos Workers v Buffalo Wholesale Supply Co., Inc., 49 AD3d 1276, 1277-1278 [4th Dept 2008]). Plaintiff has also sufficiently shown, at this stage, that defendant's purported concealment of facts in breach of its fiduciary duty to disclose constituted separate and distinct contractual breaches that were not coterminous with the other enumerated breaches of the MPA forming the basis of plaintiff's breach of contract cause of action.

Accordingly, contrary to defendant's position, the specific acts of concealment underlying plaintiff's estoppel claim are not the same acts at the heart of the vast majority of contractual breaches underlying plaintiff's substantive cause of action (cf. Knobel v Shaw, 90 AD3d 493, 494-495 [1st Dept 2011]; Transport Workers Union of Am. Local 100 AFL-CIO v Schwartz, 32 AD3d 710, 714 [1st Dept 2006], lv dismissed 7 NY3d 922 [2006]).

Nevertheless, as plaintiff concedes, equitable estoppel is not applicable to that portion of plaintiff's breach of contract claim premised on defendant's alleged breaches of its fiduciary duty to disclose (see Schwartz, 32 AD3d at 714 ["Equitable estoppel does not apply... where the misrepresentation or act of concealment underlying the estoppel claim is the same act forming the basis of the underlying substantive cause of action"]).

Nor does the continuing wrong doctrine revive these claims insofar as they are time-barred. Although it is true that the continuing wrong doctrine "tolls the running of the statute of limitations where there is a series of independent, distinct wrongs" (see Ganzi v Ganzi, 183 AD3d 433, 434 [1st Dept 2020]), it saves claims for recovery of damages only "to the extent of wrongs committed within the applicable statute of limitations" (Henry v Bank of Am., 147 AD3d 599, 601 [1st Dept 2017]; accord CWCapital Cobalt VR Ltd. v CWCapital Invs.

LLC, 195 AD3d 12, 20 [1st Dept 2021]). Thus, even under this doctrine, plaintiff may only avail itself of claims arising within six years of the commencement of this action (taking into account any applicable COVID-19 tolling). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: December 9, 2025