

MAR 09 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>WILLIAM TRAYNOR; PATRICIA TRAYNOR; REBECCA TRAYNOR,</p> <p style="text-align: center;">Plaintiffs - Appellants,</p> <p style="text-align: center;">v.</p> <p>LEXINGTON INSURANCE COMPANY, a Delaware corporation; AMERICAN GENERAL INTERNATIONAL GROUP, INC., a Delaware corporation,</p> <p style="text-align: center;">Defendants - Appellees.</p>

Nos. 09-56535, 09-56596

D.C. No. 2:09-cv-02990-FMC-SS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Florence-Marie Cooper, District Judge, Presiding

Submitted March 7, 2011**
Pasadena, California

Before: RYMER, CALLAHAN, and IKUTA, Circuit Judges.

The district court properly granted Lexington’s motion to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6);

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

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

Plaintiffs' action was barred by the limitations period in their insurance contract, and they have not established that a 12-month limitations period is both procedurally and substantively unconscionable. *See Armendariz v. Found. Health Psychcare Servs., Inc.*, 6 P.3d 669, 690 (Cal. 2000). The question is whether the limitations period is "reasonable," *Order of United Comm. Travelers of Am. v. Wolfe*, 331 U.S. 586, 608 (1947), and numerous California cases confirm that 12 months is. *See, e.g., Fageol Truck & Coach Co. v. Pac. Indem. Co.*, 117 P.2d 669, 672 (Cal. 1941) (in bank); *see also Han v. Mobil Oil Corp.*, 73 F.3d 872, 877 (9th Cir. 1995) (citing cases).

Because plaintiffs' suit was time-barred, we need not reach whether they pleaded AIG's alter ego liability sufficiently, or whether the district court erred in denying defendants' motion to strike plaintiffs' claim for punitive damages.

AFFIRMED.