

# An Illustration Saga Continues in California

March 31, 2018

As we previously reported, the Ninth Circuit in March 2017 held that violation of California's illustration statutes could serve as a predicate for an Unfair Competition Law (UCL) action, partially reversing the trial court's decision in *Walker v. Life Ins. Co. of the Southwest* on the plaintiff's UCL claims following a jury verdict for the insurer. See *Expect Focus*, Volume I, March 2017. On remand, plaintiffs filed a third amended complaint, which alleged only that the insurer violated California's UCL by failing to adhere to the illustration statutes. Specifically, this iteration of the complaint alleged that the insurer: (i) provided incomplete illustrations; (ii) portrayed nonguaranteed elements as guaranteed; (iii) failed to define terms in language understandable to a consumer; (iv) illustrated nonguaranteed elements not described in the policies; and (v) used illustrations that depict policy performance more favorable than that which could be reasonably based on actual historical experience. In December 2017, the district court granted in part and denied in part the parties' cross motions for summary judgment. First, the court rejected the insurer's argument that the named plaintiffs lacked standing. The court found that, although plaintiffs were required to demonstrate reliance, there was a genuine issue of fact on nearly all of the claims because all policy owners received illustrations and the insurer "set forth no evidence to demonstrate a lack of actual reliance." Plaintiffs similarly demonstrated a genuine issue as to the materiality of the alleged omissions. The court then addressed each of the specific purported violations. The court granted summary judgment for the insurer on the "incomplete" allegation, finding that the illustration statute did not require that every policy feature be included in a basic illustration. Based on its previous holding that the guaranteed interest rates were in fact guaranteed, the court also granted the insurer's motion on the nonguaranteed element allegation. Finding that some terms were defined and some were not, the court granted in part each party's motion on various terms not being defined. The court found that a statute providing that language should be "understandable" did not impose a mandate on insurers, and thus granted the insurer's motion on that allegation. Finally, the court granted summary judgment for plaintiffs on nearly all of their allegations that certain nonguaranteed elements that were not in the contract were found in the illustration. The litigation continues on the few limited remaining factual issues, and has been set, again, for trial next year.

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