

California Becomes Hotbed for Policy Lapse Notice Claims

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In our April 2020 issue, we discussed how policy lapse notice cases were on the rise in California after the state amended its insurance code, requiring policies to provide a 60-day grace period and notice before any policy lapsed for nonpayment. Among other things, we noted that the California Supreme Court had accepted review of the decision in *McHugh v. Protective Life Insurance Co.* that the amended regulations apply only to new contracts issued after January 1, 2013.

Since then, an avalanche of cases have been filed in federal courts, mostly by the same law firms, bringing the total number of such actions up to 18 at one point in California. Plaintiffs in these cases allege various claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and unfair competition. However, eight of these cases are stayed pending the outcome of *McHugh* and three others have been dismissed. The California Supreme Court has not yet held oral arguments in *McHugh*.

Nevertheless, an important development has occurred in the Ninth Circuit, as the circuit court will review the decision in *Thomas v. State Farm Life Insurance Co.*, in which the trial court granted summary judgment in favor of the plaintiffs. The court held that although the amendments could not apply retroactively to existing policies, they do apply to existing policies that are renewed after January 1, 2013. It will be interesting to see whether the circuit court adopts the district court's view that the "renewal" of a policy incorporates all statutory requirements enacted since the policy's last renewal — which would appear to present a number of constitutional issues under the contracts clause — or whether it will reject this theory and interpret the contract as written. Oral argument in *Thomas* is currently scheduled for June 8, 2021.

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