

# New California Lapse Statute Decision Highlights the Importance of Where Insurance Policies are “Issued or Delivered”

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This past May, the Ninth Circuit Court of Appeals affirmed a district court’s order granting summary judgment in favor of a life insurance company, finding that California’s lapse statute applies only to life insurance policies initially “issued or delivered” in California. In *Elmore v. Hartford Life and Accident Insurance Co.*, the insured alleged that the company improperly terminated his policy under California’s lapse statute, sections 10113.71 and 10113.72 of the California Insurance Code, which outlines procedural notice requirements that insurers must follow before they can terminate a policy. Despite receiving termination notices sent to his work address, which was the current address on file, the insured did not timely pay his premiums, and his policy lapsed in May 2017. The insured, a California resident, filed suit alleging that the insurer violated California’s lapse statute “by failing to notify him of his right to designate an additional party to receive lapse-of-payment notices and to send these notices to that designee before terminating his policy.” The insurer moved for summary judgment, contending that the notice provisions of the 2013 statute did not apply retroactively and did not extend to the policy in question, which was originally issued in Illinois. The district court agreed and entered summary judgment for the insurer. On appeal to the Ninth Circuit, the first ground for summary judgment (that California’s lapse statute did not apply retroactively) was foreclosed by the ruling in *McHugh v. Protective Life Insurance Co.*, in which the California Supreme Court ruled in favor of retroactivity. Nonetheless, the insurer prevailed on the second point: that the California law did not apply. Although the policyholder had moved to California after buying the policy, California’s lapse statute applies only to policies “issued or delivered” in California. The insured argued that the relevant provisions of the statute did not expressly include the condition that policies must be “issued or delivered in this state,” suggesting that it should apply to his Illinois-issued policy. The Ninth Circuit, however, construed the statute and concluded that the plain language of the law limits its reach only to policies “issued or delivered” in California, and affirmed the district court’s ruling. Life insurers should take note of the new *Elmore* decision, which should

limit *McHugh's* expansion of the California lapse statute for a subset of policies not originally issued in California. *This article was co-authored by Carlton Fields summer associate Annick Runyon.*

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