

Policy Lapse Notice Claims on the Rise in California

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Irma Rebozo Solares



Julianna Thomas McCabe

Two companion amendments to the California insurance law have received increased attention from the plaintiffs' bar recently. On January 1, 2013, sections 10113.71 and 10113.72 were enacted to amend the California Insurance Code requiring life insurance policies to provide for a 60-day grace period before any lapse for nonpayment and to require insurers to provide notice of lapse or termination of a life insurance policy for nonpayment of premium to policy owners and their designees at least 30 days before the termination's effective date.

The statutory amendments generally garnered little attention until last year. In February 2019, following certification of a class of beneficiaries who did not receive notice of lapse or termination of a life insurance policy, a California district court granted summary judgment to the class in *Bentley v. United Omaha Life Insurance Co.* and held that the statutes apply to preexisting policies upon their first periodic renewal date after the new legislation's effective date. The court stated that it was not applying the statutory provisions retroactively but rather that the statutes apply prospectively to policies upon renewal. As a practical matter, however, the court's ruling did have retroactive force in that it applied the new notice and lapse requirements to policies that were issued long before the statutory provisions were passed or even contemplated. In May 2019, the parties in *Bentley* stipulated to a judgment for the class of approximately \$3 million. In December 2019, another California district court issued a similar summary judgment order in an individual action, *Thomas v. State Farm*, rejecting the defendant's attempt to distinguish *Bentley* based on different renewal language in the plaintiffs' term life policies.

In the California state court system, interpretation of the legislation has differed. In October 2019, an intermediate state appellate court in *McHugh v. Protective Life* deferred to the interpretation of the California regulators, who concluded that the statutes should only apply to new contracts issued after January 1, 2013. The appellate court affirmed a trial court's special verdict in favor of the insurance company. The California Supreme Court accepted review and will now decide whether the statutes apply to all policies, or only those first issued in 2013 or later.

Like bees drawn to a flower, plaintiffs' counsel have filed **three new class actions** since February of this year — all in the Central District of California — claiming that the insurance companies violated the Insurance Code by failing to provide annual notices to policyholders or their designees, which resulted in lapses in benefits. The actions allege varying claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unfair competition, and declaratory relief for alleged violations of California Insurance Code sections 10113.71 and 10113.72. One action also seeks certification of an elder abuse subclass.

We can expect to see additional class action filings this year unless and until the California Supreme Court affirms *McHugh* and effectively overrules *Bentley* and *Thomas*. Stay tuned.

In a separate but related development, as a result of the COVID-19 pandemic, on March 18, 2020, the California insurance commissioner sent a notice requesting that all insurance companies provide their policyholders with at least a 60-day grace period to pay insurance premiums.