RECENT COURT DECISIONS

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Proposition 103 Revisited: Renewals and Withdrawals

Travelers Indemnity Co. v. Gillespie, 50 Cal. 3d 82, 785 P.2d 500, 266 Cal. Rptr. 117 (1990).

The California Supreme Court concluded that the mandatory renewal provisions contained in Proposition 103 did not prevent a company from refusing to renew policies if it applied to withdraw from doing business in the state. Travelers submitted an application to withdraw from doing business on November 7, 1988, the day before the election presenting Proposition 103. The following day, California voters adopted the changes which went into effect on November 9, 1988. Proposition 103 contained a provision that required insurers to renew policies except for nonpayment, fraud or misrepresentation, or a substantial increase in hazard. Nonetheless, Travelers began sending notices of nonrenewal on November 9. The insurance commissioner ordered an investigation and found Travelers in violation of the mandatory renewal provisions. She concluded that the insurer was required to renew policies in force on November 9 until the withdrawal became formally effective. Travelers appealed directly to the state supreme court, and the court agreed to hear the case.

The case presented two issues concerning the interpretation of Proposition 103. The first question the court addressed was whether Proposition 103 applied to policies in force on November 9, or only to policies entered into after that date. Relying on its prior decision in *Calfarm*,[1] the court concluded that the changes applied to policies in effect.

Second, the court addressed the effect of a withdrawal on the insurer's right to discontinue coverage. Initially, the court found that the renewal requirement did not apply to a company that had withdrawn. The court noted that Proposition 103 contemplated withdrawal in that it authorized the insurance commissioner to establish joint underwriting if insurers substan-

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[1] Calfarm Ins. Co. v. Deukmejian, 48 Cal. 3d 805, 771 P.2d 1247, 258 Cal. Rptr. 161 (1989). See Darr, "Recent Court Decisions," *The Journal of Risk and Insurance*, 56: 572 (1989), for a summary of the *Calfarm* case.

tially withdrew from the market. To enforce renewal on an insurer would thus be inconsistent with the assumption that withdrawal would make joint underwriting necessary.

The court extended the exception to applicants for withdrawal as well. Starting from the premise that Proposition 103 did not prevent withdrawal, the court found that requiring further renewals would overcomplicate the working out process. Under statutes not changed by Proposition 103, an insurer seeking withdrawal must demonstrate that they have terminated policies or found reinsurance for existing obligations. If the insurer were required to renew while its withdrawal application was pending, the orderly process of withdrawal would be more difficult and expand the potential liability of reinsurers. Further, the court concluded that the submission of the certificate to do business as part of the withdrawal application changed the status of the insurer so that it was not permitted to write new business including renewals of existing policies. Thus, the court concluded that an insurer submitting an application to withdraw need not renew existing policies despite the requirements of Proposition 103.

New York Asbestos Cases: Order Appointing a Settlement Referee

In re New York City Asbestos Litigation, Index No. 40,000 (Jan. 30 N.Y. Sup. Ct. 1990); *In re Joint Eastern and Southern Districts Asbestos Litigation*, N.Y. Asbestos Litigation Order, (S.D.N.Y. Jan. 30, 1990).

In a joint order, state and federal judges ordered the appointment of a settlement referee to assist the conclusion of the Brooklyn Navy Yard asbestos cases. The cases arose from exposure during and after World War II. The order stated the courts' belief that prior litigation resolved the general legal issues, leaving only issues concerning the fair settlement of the remaining cases. The courts further justified their unusual order by noting the court congestion caused by the hundreds of asbestos cases, the substantial cost of treating these cases individually, and the need to free resources to deal with the increase in criminal cases. The order directed the parties to meet promptly with the referee and to assist him in the disposition of the cases without trial.

Coverage of State Guarantee Fund for Marine Insurance

Sifers v. General Marine Catering Co., 892 F.2d 386 (5th Cir. 1990).

Interpreting an exclusion for "ocean marine insurance," the Fifth Circuit Court of Appeals concluded that the Louisiana guarantee fund did not cover maritime personal injury and property claims. Louisiana adopted a guarantee fund in 1970 to reinsure the obligations of insolvent insurers doing business in the state. The law excluded coverage for ocean marine insurance but failed to define the term. Parties claiming personal injury and property damage as a result of maritime accidents filed claims against the fund after the primary insurers became insolvent. The fund denied coverage based on the exclusion, and the court agreed. First, it found that a definition concerning inland marine insurance included personal injury and property coverage, thus