

Policyholder May Sue Insurer For Fraud

The trial court sustained a demurrer in favor of State Farm Life Insurance Company (“State Farm”) on a complaint alleging fraud, bad faith and negligent hiring. On appeal, the plaintiff sought only reinstatement of the fraud cause of action which was dismissed on the grounds that it was barred by a class action settlement and applicability of the statute of limitations. The Second Appellate District Court held that the fraud claim was not so barred and the plaintiff was entitled to amend the complaint to plead a cause of action with greater particularity.

The primary issue before the court was whether compensation received by the plaintiff as a result of a class action lawsuit against State Farm precluded the plaintiff’s subsequent action. While the class action lawsuit did involve fraud allegations, it involved misrepresentations in the placement of the policy and vestment of the premiums. The plaintiff alleged in the subsequent action before the court that the misrepresentations and conduct by State Farm occurred after the issuance of the policy and, thus, involved unlawful compromises of the plaintiff’s rights specifically exempted by the class action settlement.

The trial court found that the misrepresentations alleged in

the new complaint were released transactions in the class action lawsuit for which the plaintiff had already received compensation. Further, the trial court found that the pleading was insufficiently specific with respect to time and means of making the

representations and the claim was barred by the statute of limitations as the damages were incurred more than three years prior to filing of the action. Although the trial court recognized that these problems could potentially be cured by amendment, the trial court held that the misrepresentation claim was incurably barred by the class action settlement.

In reviewing the facts as alleged in the complaint as true as required when addressing a demurrer sustained by the trial court, the appellate court found that some of the representations set forth in the complaint potentially did occur after the policy was issued and within the statute of limitations period. Thus, the appellate court concluded that the trial court should have allowed the plaintiff to amend the complaint to set forth facts to overcome the basis for the demurrer.

Citation: *McNeill v. State Farm Life Insurance Company*, 04 Daily Journal 2845 (March 5, 2004)

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Homeowner Coverage - continued from page 1

ity finding the language at issue clear.

The insurers contended that the increased cost due to changes in the building code was also excluded under the policy based on the policy provision that precluded coverage for “enforcement of any ordinance or law regulating construction, repair or demolition of a building or other structure unless endorsed to this policy” (“ordinance at law exclusion”). The court recognized that the ordinance at law exclusion was susceptible to the interpretation that it excluded building code upgrades and also noted that at least one decision (*Bischel v. Fire Insurance Exchange* (1991) 1 Cal.App.4th 1168, 1178) so held. However, the court found *Bischel* distinguishable because it relied on Insurance Code § 2071 applicable to standard form policy language required under the code for fire policies. The language in the Protector Plus Policy was not the standard form policy language. The policy guaranteed “100% of replacement cost as determined by [the insurer’s] building replacement cost guide.” Further, the court noted that there was no deduction for appreciation and the amount would either be sufficient for “equivalent construction and use on the same premises” or “the amount actually and necessarily spent to repair and replace the building intended for the same occupancy and use” whichever is smaller. The court refused to conclude that the Protector Plus Policy complied with the standard “actual cash value” policy simply because it used the phrase “equivalent construction.” Because the court concluded

that the Protector Plus Policy was not in substantial compliance with the statutory language of § 2071, the court interpreted the ordinance-or-law exclusion by applying the usual rules of policy interpretation.

The court found that the ordinance or law exclusion was reasonably susceptible to more than one interpretation and, therefore, found it ambiguous. Because the court found the exclusion ambiguous, it was the insurer’s burden to establish that its interpretation was the only reasonable interpretation. This did not mean that the court had to select a “correct” interpretation from the variety of suggested interpretations. Rather, the court only needed to find a reasonable interpretation permitting coverage. Thus, the court found that an insured might reasonably expect coverage “for the cost of a replacement house of substantially similar construction that is the functional equivalent of the house lost or the portion of the house destroyed even if the changes in the building code resulted in a higher loss settlement than the cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss, without allowance for any increased cost to repair reconstruction by reason of any ordinance or law regulating construction or repair.”

Citation: *Fire Insurance Exchange v. Superior Court*, 04 Daily Journal 2768 (March 4, 2004)