



March 12, 2025

VIA HAND DELIVERY

Honorable Chief Justice Patricia Guerrero
and Honorable Associate Justices

Supreme Court of California
350 McAllister Street, Room 1295
San Francisco, California 94102-4797

Re: *Susan Pitt v. Metropolitan Tower Life Insurance Co.*, Case No.
S289376; letter in support of request for decision (C.R.C. 8.548(e))

Dear Chief Justice Guerrero and Associate Justices:

The Life Insurance Consumer Advocacy Center (“LICAC”) is a California-based non-profit social welfare organization that advocates for the protection of California consumers of life insurance and annuity policies. We support the request for decision submitted by the Ninth Circuit in the above-referenced action.

The Ninth Circuit has asked this Court to decide the following question: “Do California Insurance Code sections 10113.71 and 10113.72 (collectively, ‘the Statutes’) apply to annually renewing life insurance policies originally issued in another state, but subsequently renewed and administered in California?” We urge the Court to grant the Ninth Circuit’s request. Doing so will enable this Court to ensure that California consumers do not lose the protection of the Statutes merely because they were residing elsewhere when they bought their policies and to constrain the Ninth Circuit’s current tendency to under enforce the Statutes.

A. The Legislature adopted the Statutes to protect California consumers.

The Statutes set forth grace period and notice requirements intended to “shield consumers from losing life insurance coverage because of a missed premium



payment.” *McHugh v. Protective Life Ins. Co.*, 12 Cal. 5th 213, 220 (2021). In drafting the Statutes, the California Legislature was concerned with “inadvertent” or “accidental” lapses. *Id.* at 233 and 241. The Legislature was aware that “longtime policy owners may miss a payment ‘because they were being hospitalized when the bill came, ... as a result of a mail mix-up or forgetfulness,’” and “enacted the ... [Statutes] to protect existing policy owners from losing the important life insurance coverage they had spent years paying for.” *Id.* at 240-241 (quoting legislative history, emphasis omitted).

B. The Ninth Circuit’s request raises a significant question potentially affecting hundreds of thousands of California consumers.

The Ninth Circuit’s request that this Court clarify the scope of the Statutes was prompted by a dispute between an insurance company and the beneficiary of a deceased policyholder who had moved to California after purchasing his policy and had paid renewal premiums while residing here. The insurance company argues that the Statutes apply only to “policies ‘issued or delivered in this state’”; that “life insurance policies may only be ‘issued or delivered’ once”; and that, therefore, “policies purchased out of state are not subject to the ... Statutes.” 2/20/25 Order Certifying Question to the Supreme Court of California (“Certification Order”) at p. 6. The beneficiary argues that the “Statutes apply to policies that are originally issued or delivered out of state but maintained in California under the state’s ‘renewal doctrine.’” *Id.* at pp. 6-7.

The Ninth Circuit has described this doctrine as the principle that each renewal of an insurance policy “incorporates any changes in the law that occurred prior to the renewal.” *Stephan v. Unum Life Ins. Co. of Am.* (9th Cir. 2012) 697 F.3d 917, 927 (citing *Modglin v. State Farm Mut. Auto. Ins. Co.* (1969) 273 Cal.App.2d 693, 700). Thus, “[u]nder California law ‘insurance policies are governed by the statutory and decisional law in force at the time the policy is’” either issued or renewed. *Id.* (quoting, *Interins. Exch. of the Auto. Club of S. Cal. v. Ohio Cas. Ins.*



Co. (1962) 58 Cal.2d 142, 148). The Ninth Circuit seeks this Court’s guidance because, “no California case counsels whether the renewal principle generally applies to insurance policies that were originally issued or delivered out of state.” Certification Order at p. 10.

The Court should grant the Ninth Circuit’s request for guidance and use the opportunity to hold that, for policies renewed in California, the Statutes “apply regardless of where the policies originally issued.” *Id.* at p. 6 (brackets and interior quotation marks omitted). In support of the Ninth Circuit’s request, we emphasize four points.

First, the import of the question presented goes far beyond the resolution of a single case. Since the Statutes took effect in 2013, about 5 million people – on average, nearly 500,000 per year – have moved to California.¹ Approximately 38% of these new California residents would have moved into this state owning life insurance policies purchased elsewhere.² Thus, close to 200,000 policyholders

¹ According to U.S. Census data, the numbers of new residents moving to California each year were as follows: 2023 – 422,075 people; 2022 – 475,803 people; 2021 – 433,402 people; 2020 – no data available; 2019 – 480,204 people; 2018 – 501,023 people; 2017 – 523,131 people; 2016 – 514,758 people; 2015 – 514,477 people; 2014 – 513,968 people; and 2013 – 485,477 people. U.S. Census Bureau, “State-to-State Migration Flows,” tables for 2013-2023, <https://www.census.gov/data/tables/time-series/demo/geographic-mobility/state-to-state-migration.html>.

² Based on recent industry statistics from the Life Insurance Marketing and Research Association (“LIMRA”), 38% of U.S. consumers own individual life insurance. Stephen Wood et. al., LIMRA, 2022 Insurance Barometer Technical Supplement, Table 1, Page 4.



move to California each year with policies originally issued in other states. The rights of these policyholders will be directly affected by any ruling from this Court or the Ninth Circuit regarding the extent to which the Statutes apply to out-of-state policies renewed in California.

Second, the text of the Statutes does not suggest that the Legislature intended to exclude California consumers who renew policies first issued out of state from the protection of the Statutes or the “uniform notice scheme” they establish. *McHugh*, 12 Cal. 5th at 220. Insurance Code §10113.71(b) broadly states, “A notice of pending lapse and termination of a life insurance policy shall not be effective unless mailed by the insurer to the named policy owner, [and] a designee named pursuant to Section 10113.72” Section 10113.72(b) imposes “a concomitant requirement that the insurer notify a ‘policy owner’ annually of his or her right to designate one or more persons to receive notice of lapse or termination of a policy for nonpayment of premium.” *Bentley v. United of Omaha Life Ins. Co.* (C.D. Cal. 2019) 371 F. Supp. 3d 723, 732 (C.D. Cal. 2019).

As Federal trial courts have recognized, “Nothing in these cited provisions predicate the notice upon whether the ‘policy owner’ is an existing, new, or renewing policy holder.” *Id.* at 733. *See also e.g., Thomas v. State Farm Ins. Co.* (S.D. Cal. 2019) 424 F. Supp. 3d 1018, 1028 (where a policy holder paid renewal premiums after the effective date of the Statutes, “the Policies incorporated the new grace period, designation, and notification requirements ... [and the insurer] was required to comply with such requirements before terminating the Policies”). Similarly, by their terms, the applicability of these provisions does not turn on whether a renewed policy was first issued in California or elsewhere.

Third, while the Ninth Circuit expresses confusion over whether the renewal doctrine “applies to insurance policies that were originally issued or delivered out of state” (Certification Order at p. 10), there is no reason to limit the doctrine to only policies first issued in California. *Modglin*, the first case to articulate the



renewal doctrine, addressed a policy issued outside of California and the statute requiring that car insurance policies provide uninsured motorist coverage. The court expressly rejected the insurance company’s contention that “the statute does not apply to an auto insurance policy issued and delivered in Arizona where the insured moved to California” before renewing the policy. *Modglin*, 273 Cal.App.2d at 699.

Just as *Modglin* refused to “formulate a rule that the [uninsured motorist coverage] statute only applies to new policies, as distinguished from renewals of existing policies” (*id.* at 700), this Court should now hold that the notice and grace period requirements of the Statutes apply to policies renewed in California, not just those newly issued here.

Finally, LICAC is concerned that, without guidance from this Court, the Ninth Circuit is likely to adopt a rule contrary to the interests of the consumers the Statutes are intended to protect. In *McHugh*, this Court construed the Statutes as “protect[ing] policy owners – including elderly, hospitalized, or incapacitated ones who may be particularly vulnerable to missing a premium payment – from losing coverage.” *McHugh*, 12 Cal. 5th at 220. The Court held that “insurers cannot terminate policies for a premium lapse until they give at least 30-day mailed notice to the policy owners and to any additional designated individuals.” *Id.* at 246.

Despite *McHugh*’s clear statements, the Ninth Circuit recently refused to acknowledge that “an Insurer’s failure to comply with these statutory requirements means that the policy cannot lapse”; or that for such a policy, which remains in force, the insurer breaches its “contractual obligations by failing to pay benefits to the Beneficiary under the policies after the Insured’s death.” *Small v. Allianz Life Ins. Co. of N. Am.* (9th Cir. 2024) 122 F.4th 1182, 1195 (citation, brackets, and interior quotation marks omitted). *Small* ignored California law on statutory construction and adopted a rule that effectively allows insurers to terminate policies without complying with the Statutes, holding that they will face liability



only when the beneficiary can overcome the rarely surmountable hurdle of showing that a now-deceased policyholder would not have allowed the policy to lapse but for the insurer's failure to provide a proper lapse notice. *Id.* at 1197.

Small demonstrates that the Ninth Circuit currently is inclined to apply the Statutes narrowly – notwithstanding *McHugh's* construction of them and its explanation of their broad consumer protection purposes. The pending request for resolution of questions of California law gives this Court a chance to steer the Ninth Circuit away from any unduly constrained application of the Statutes; to clarify the meaning and effect of *McHugh*; and to ensure that federal courts properly enforce the Statutes to protect policy holders residing in California.

The Court should grant the Ninth Circuit's request for a decision and should rule that the Statutes apply to all life insurance policies renewed in California without regard to whether they were originally issued in another state.

Respectfully,

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