



State Fund Wins One in Fight with CDI

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The State Compensation Insurance Fund is getting its wish. A court will hear its contention that its tiered rating system algorithm was appropriately filed with the California Department of Insurance. State Fund convinced the court to reject requests by the CDI and an employer to deny State Fund's petition— but just barely.

The case affects the tier modifiers; it applied to tens of thousands of workers' comp policies and some \$150 million in premium from the 2015 and 2016 policy years.

The latest ruling in *State Compensation Insurance Fund v. Lara* reverses the court's initial finding that State Fund's petition for a writ of mandate was untimely. It initially held that State Fund failed to show any "misleading conduct" by the Department that would block the Department's use of key findings from the original decision in new cases arising against State Fund. But the court gave the carrier a chance to introduce additional facts to support its case. These alleged facts were enough to change the court's mind.

Original Sin

The dispute stems from a 2019 settlement State Fund reached with CDI to remove the precedential designation from a decision that Insurance Commissioner Dave Jones issued in late 2018. That decision related to A-Brite Blind and Drapery's successful challenge of State Fund's decision to place it in its highest-rated tier. Jones' decision invalidated SCIF tiered rating modifier after an administrative law judge found that it was not properly filed. State Fund contends that it was filed but was kept confidential under a mutual agreement with the Department's staff.

Misrepresentations?

State Fund's amended petition included claims that Deputy Commissioner and Senior Counsel Bryant Henley made representations during the negotiation that agreeing to the settlement "would accomplish the same effect as a victory in a writ petition." State Fund alleges that Henley promised that the Department would not use the decision against State Fund "in any future hearing for any purpose."

But that's not what happened. Key findings in that settled case have, in fact, been used against State Fund in subsequent disputes – specifically the ALJ's finding that the tiered rating algorithm was never filed before State Fund put it to use.

The court characterized of State Fund's new allegations as being claims of "intentional misrepresentation or promissory fraud." The arguments are part of State Fund's claim that the timeline for filing the petition for writ should have been stopped by the settlement agreement or

barring that the Department should be barred from using findings from the original decision in any new cases.

The court again rejected State Fund's claim that the settlement agreement tolled the deadline for filing its petition with the court. On the issue of equitable estoppel, however, it found State Fund more convincing.

"These allegations essentially plead facts for intentional misrepresentation or promissory fraud – that SCIF reasonably relied to its detriment (by entering the Settlement Agreement) based on the Commissioner's intentional misrepresentations made to it," the court said, noting Henley's alleged statements. "The court finds that the [First Amended Petition's] allegations regarding promissory fraud barely meet the heightened pleading standard required for fraud. Additionally, SCIF's allegations that the doctrine of equitable estoppel applies, especially to a state agency represented by counsel, are at best weak."

Nonetheless, the court says it will decide the case on its merits and overruled the demurrers filed by A-Brite and the Department. It ordered the Department to file a response within 30 days.

Discovery Planned

Roxborough Pomerance Nye & Adreani partner Drew Pomerance says they plan a vigorous investigation into State Fund's claim that CDI officials hoodwinked them into signing the settlement agreement. Pomerance is representing A-Brite in the case. "We're going to do discovery into this allegation because we believe that it's not true. We don't believe that anybody from the Department of Insurance ever made any of those representations to State Fund," he says.

Firm partner Nick Roxborough held fundraisers for Commissioner Lara's campaign at his home in Southern California. Pomerance pointed out that the firm is handling a pending class action against State Fund over the tiering algorithm.

Pomerance notes that the settlement agreement is explicit in its terms – that CDI would remove the precedential designation from the decision in exchange for State Fund not filing a petition for writ of mandamus. "There was no representation that there was any discussion about whether or not you could use regular judicial doctrines like collateral estoppel, res judicata, or anything," he points out. "State Fund was represented by their general counsel. It's preposterous to think that the general counsel would not have thought about that if that's what they really wanted. We believe that allegation was really just made up to preserve the lawsuit, but hopefully, discovery will show that it has no truth to it whatsoever."

Regardless of the outcome of this case, Pomerance says there will be no blowback on A-Brite. Under the original settlement, State Fund agreed to remove the modifier from the policy, and its premium was recalculated and the excess refunded.

Copies of the court's decision are available in our Resources section or by [clicking here](#).

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