

S. Ct. Case No. S259215

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

BLAKELY McHUGH, et al.,

Plaintiff-Appellee/Cross-Appellant,

v.

PROTECTIVE LIFE INSURANCE COMPANY,

Defendant-Appellant/Cross-Appellee.

After Decision by the Court of Appeal
Fourth Appellate District, Div. One (D072863)
(Superior Court of San Diego County, Hon. Judith F. Hayes
37-2014-00019212-CU-IC-CTL)

**APPLICATION FOR LEAVE TO FILE,
AND SUBMISSION OF, BRIEF BY AMICI CURIAE NEIL GRANGER IN
SUPPORT OF IN SUPPORT OF APPELLANT BLAKELY MCHUGH, ET
AL.**

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In Pro Per

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to California Rule of Court, rule 8.208, I, Neil Granger, certify that I have no financial interest in the outcome of this proceeding and, furthermore, I know of no other person or entity that has a financial or other interest in the outcome of the proceeding that I believe the Justices of this Court should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

Dated: November 25, 2020

Respectfully Submitted,

By:



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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

Under California Rules of Court, rule 8.200(c), I, Neil Granger, request permission to file the attached brief as *amicus curiae* in support of the position of Petitioner Blakely McHugh, et al.

STATEMENT OF INTEREST OF THE *AMICUS CURIAE*

I helped draft the statutes at issue in this case.

I am a long-time insurance and annuity consultant. Since 1984, I have also been a licensed Life and Health Agent in California. Since December of 2015, I have also been licensed as a Life and Disability Analyst in California. This is the highest-level Life license in the state. Out of over 300,000 insurance agents in California, less than 40 have this license.

In my long career in financial services and insurance consulting, I have focused particularly on special problems facing seniors and on combatting elder financial abuse, particularly in the insurance and financial services industries. My experience has given me the opportunity to work with various government officials and lawmakers that share my goal of protecting seniors.

For example, in 2008, I served on the California Department of Insurance (“DOI”) Task Force on Elder Financial Abuse, eventually

testifying in front of the DOI Commissioner at the time, Commissioner Poizner, on matters related to elder financial abuse and insurance agent behavior. Also in 2008, I was invited to testify and did testify before the state Senate Finance and Insurance Committee in opposition to AB2464 and AB2465, which were aimed at relaxing or eliminating certain disclosure requirements for life and annuity policies sold in California that, in my opinion, would have negatively impacted the seniors that had purchased those products.

Also, in September 2011, I was invited by the DOI to participate in a workgroup focusing on solutions to the abusive sales of certain insurance and annuity products to seniors. The workgroup focused on possible solutions involving both regulatory and legislative options.

I have worked with several DOI commissioners over the years. California Insurance Commissioner David Jones, for example, appointed me to the DOI Curriculum Board in May 2011. In January 2017, I was elected Chairman of the DOI Curriculum Board.

I am also a subject matter expert for the California DOI and have been asked by the DOI to review the test questions used on both the Life Agent and the Annuity tests given to new agents in California. In addition, I have worked with DOI investigative units on many

occasions on cases involving agent practices here in California. I have also worked with many County District Attorneys over the years as a consultant, presenter, or expert witness about protecting seniors and prosecuting financial elder abuse.

In about September 2012, I was approached by the office of California Assembly Member (now Los Angeles City Attorney) Michael Feuer, and Roy Prescott Cole, the Senior Staff Attorney with the California Advocates for Nursing Home Reform (“CANHR”) about the drafting of Assembly Bill 1747 (“AB 1747”), which became California Insurance Code Sections 10113.71 and/or 10113.72 (the “Statutes”). Collectively, Assembly Member Feuer, CANHR, and I crafted the language of AB 1747. We did so, among other reasons, to address serious public policy concerns we had at the time for seniors and other persons in poor health. Language that I drafted or helped draft appears in the Statutes today.

To summarize my interests in this matter, I have devoted much of my career to protecting California seniors participating in our insurance and other financial services markets. I have worked with cities, counties, the DOI, and lawmakers to institute practices and policies to protect seniors. One of my proud achievements in this field

was the co-drafting of the Statutes at issue here. This appeal, and the proper interpretation and application of the Statutes, therefore, has the potential to either confirm or undo my good work, and concerns interests central to my work and my mission over the years to protect consumers, especially seniors, who participate in our insurance markets.

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AMICUS BRIEF OF NEIL GRANGER

I. THE STATUTES WERE WRITTEN TO PREVENT UNINTENDED FORFEITURE OF LIFE INSURANCE, PARTICULARLY BY SENIORS, AND TO STANDARDIZE INSURANCE PRACTICES

Assembly member Feuer, CANHR, and I designed the Statutes to prevent or lessen the possibility of unintended or uninformed loss of valuable life insurance, especially by seniors, for just one accidentally missed payment. Our goal was also to standardize the procedures used in all life insurance when a policyholder fails to make a premium payment and when an insurer attempts to apply provisions of the policy that allow for lapse and termination.

We wanted to codify that an insurance carrier could not cancel a policy without giving a 30-day notice, to ensure the policy remained in effect should a policyholder miss a payment. Our collective aim in working on the language of AB 1747 was also to give all policy owners and insureds a means to have secondary notification of lapse and termination given to a third party to prevent lapses and terminations of coverage.

It is very common with these types of life insurance products that the policy owner and party responsible for payment of premiums is also the insured. Due a rapid decline in health and/or death, the policy owner is often no longer available to explain the circumstances related to any potential lapse or termination of coverage. And the beneficiary of the policy is often unaware of the circumstances related to any lapse of coverage because the insurer usually has the insurance documents and the requirements for termination of coverage. These requirements are typically not communicated to the beneficiary.

We intentionally did not include any language in AB 1747 that would exempt older policies from the notice requirements. It was important to us, the drafters, that the legislation apply to both new and existing policies that were in force as of January 1, 2003. Had policies that were issued or delivered before January 1, 2013 been exempted from the new notice requirements – as the Court of Appeal has now effectively done - AB 1747 would not have been effective because it would not have applied to any of the existing life insurance policies in California at that time. Stated differently, AB 1747 would have applied to zero policies at the moment it became effective and would have only

gained real value, or protected a significant number of Californians, many years later. That was never our intent.

At the time we drafted AB 1747, I specifically discussed with DOI's investigators that accidental lapses and terminations of this kind were already happening and had been happening for some time because of the lack of notification. This was a problem that we wanted to fix - the goal was to address the problem for existing policyholders that were aging, as well as new ones. We included the language "issued or delivered" into AB 1747 to confirm that this law applied to life policies issued either before or after January 1, 2013.

During the legislative consideration of AB 1747, I did not receive (and to my knowledge, neither did CANHR nor Assembly Member Feuer's office) any complaint about the legislation going into effect as of January 1, 2013 and applying to all policies as of that date. To my knowledge, there was no request from the insurance industry, including Defendant-Appellant, to exempt policies that would not have to comply with AB 1747.

II. THE COURT OF APPEAL'S AND DEFENDANT-APPELLANT'S INTERPRETATION OF THE STATUTES MAKES NO SENSE GIVEN THE STATUTES' PURPOSES

As I understand it, the Court of Appeal held that The Statutes should never apply to policies issued before 2013. That interpretation is completely contrary to the purposes we had in crafting The Statutes in the first place.

First and foremost, the Court of Appeal's interpretation largely cuts today's seniors out of The Statutes' protections even though we wrote the Statutes specially to protect today's seniors. Defendant-Appellant and the Court of Appeal would have only the policies written in 2013 and later be protected by The Statutes. But, in 2013, the people buying life insurance policies were, generally, not seniors. Likewise, people buying their first life insurance products today are generally not seniors.

People typically get life insurance, rather, once they get married, have their first child, or when they get it through that first good job. These events are more typical of young adults than seniors. The industry statistics bear this out. For example, in 2020, 38% of people under 25 had life insurance. And 55% of those between 25 and 44

already have life insurance, as did 55% aged between 45 and 64. In 2011, the percentages were even higher, with 60% of people 25 years of age to 44 already having life insurance, and 60% of those aged between 45 and 64.¹

The notion that purchasers of life insurance products tend to be young adults also makes sense given the economics of buying life insurance. The cost of life insurance only goes up as you get older. That is because as you get older, you are more likely to develop health problems that make insurance more expensive or even disqualify you from purchasing a plan. Insurance companies obviously know this, and they price their plans accordingly. And when it comes to permanent life insurance, which has a cash value component, holding the policy longer lets the cash value grow more over time. In short, economically rational consumers have long understood that once you might have a need for life insurance, the younger you are when you buy it, the better. Conversely, older consumers understand that buying insurance at their

¹ All these statistics are from the most recent, 2020, Insurance Barometer Study by the Life Insurance Marketing and Research Association, or “LIMRA.” (Available for free at: <http://www.njltc.com/documents/2020%20LIMRA.pdf>). LIMRA, founded in 1916, is a worldwide research, consulting, and professional development organization serving the financial services industry.

age makes less sense. In sum, a statute that only applies to today's purchasers of life insurance necessarily is geared toward younger adults. That was never our intent in drafting the Statutes. Our intent was to protect those younger adults along with prior purchasers, especially today's seniors. The written legislative history behind The Statutes accurately confirms our intent in this regard.

The Court of Appeal's new interpretation also turns a blind eye to a major explanation behind many unintended lapses. As I stated above, in drafting The Statutes we wanted to address when, perhaps after years of faithful payments, a consumer accidentally misses a premium payment as a result of a rapid decline in health or sudden onset of a difficult health condition. These are things that, unfortunately and naturally, tend to occur to seniors more so than young adults. We wrote the Statutes to address this issue.

Finally, the Court of Appeal's interpretation does the opposite of standardizing insurance contracts in the marketplace – another one of our goals in drafting The Statutes. Instead, the Court of Appeal's approach, if affirmed, ensures different classes of policies with different requirements and protections. According to Defendant-Appellant and the Court of Appeal, the insurance policy bought by John

Doe on December 31, 2012 has fewer safeguards than the one his neighbor purchased, for the same coverage and from the same insurance company, the very next day. This is also contrary to our intent in drafting The Statutes.

III. CONCLUSION

For these reasons, this Court should reverse the decision of the Court of Appeal here and confirm that The Statutes apply to policies in-force on or after January 1, 2013.

Dated: November 25, 2020

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CERTIFICATE OF LENGTH OF BRIEF

I, Neil Granger, declare under penalty of perjury under the laws of the State of California that the word count for this Brief, excluding Tables of Contents, Tables of Authority, Proof of Service, and this Certification is less than 1988 words as calculated utilizing the word count feature of the Microsoft Word software used to create this document.

Dated: November 25, 2020

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PROOF OF SERVICE

I, Neil Granger, declare as follows:

I am a resident of the State of California, residing or employed in Oakland, California. I am over the age of 18 years and am not a party to the above entitled action. My business address is 651 Oakland Avenue, #2F, Oakland, CA 94611, and my electronic service address is ngranger51@gmail.com.

On November 25, 2020, true copies of APPLICATION FOR LEAVE TO FILE, AND SUBMISSION OF, BRIEF BY AMICI CURIAE NEIL GRANGER IN SUPPORT OF IN SUPPORT OF APPELLANT BLAKELY MCHUGH, ET AL. were served on the interested parties in this action by electronically serving the above named documents as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 25, 2020, at Oakland, California.

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **McHUGH v. PROTECTIVE LIFE INSURANCE**

Case Number: **S259215**

Lower Court Case Number: **D072863**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

11/30/2020

Date

/s/Neil Granger

Signature

Granger, Neil (Pro Per)

Last Name, First Name (PNum)

Insurance and Annuity Consulting

Law Firm