

**Superior Court of California  
Mendocino County  
Ukiah Branch**

**FILED**

JUL 3 2001

CLERK OF MENDOCINO COUNTY  
SUPERIOR COURT OF CALIFORNIA

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**STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, et al.,**

**Plaintiffs,**

**Case No. 82819**

vs

**JOHN W. WIER and RICHARD L.  
PYORRE,**

**Defendants.**

**Order Denying Plaintiffs' Motion for Summary Adjudication and  
Granting Cross-complainants' Motion for Summary Adjudication**

Plaintiffs ("State Farm") bring this motion for summary adjudication on the first and second causes of action on the cross-complaint of Weir and Pyorre wherein Weir and Pyorre ("defendants") seek relief relating to State Farm's allegedly improper termination of the parties' agency agreements. Weir and Pyorre bring their cross-motion against plaintiffs' thirteenth affirmative defense to that cross-complaint. Both motions relate to the construction of the contract termination language set forth in the parties' written agreements and, primarily, to the effect of a judgment previously entered in related litigation in federal court: the *Appling* judgment.

**Collateral Estoppel:**

Defendants Wier and Pyorre were two of a larger number of plaintiffs in a prior action (*Appling v State Farm*) wherein the *Appling* plaintiffs requested, in their third cause of action in the sixth amended complaint, a determination that their

agency contracts with State Farm could only be terminated for cause and not simply by notice. The *Appling* court, in its January 7, 2000 ruling on cross-motions for summary adjudication on that third cause of action, determined that the contract language permitted termination by notice only, without the requirement of good cause. That determination was incorporated in the judgment entered on July 3, 2000. Defendants herein, Weir and Pyorre, were named as plaintiffs to some of the causes of action in the sixth amended complaint in *Appling*, but were not parties to the third cause of action at the time of summary judgment order. State Farm's motion for summary adjudication is based primarily upon the doctrine of collateral estoppel. The prerequisites of that doctrine are an identity of issues in the prior adjudicated case and the present case, a final judgment on the merits and a determination that the party against whom the doctrine is asserted was a party or in privity with a party in the prior action. (*Bernhard v Bank of America (1942) 19 C2d 807, 813*)

**Claim Preclusion:** In *Appling*, the court construed the contract language to permit termination upon notice alone. State Farm contends that Weir and Pyorre are now collaterally estopped by that judgment from requesting this court to construe the same termination language. In an action between the same parties on a different cause of action, the judgment in a prior adjudication will operate as collateral estoppel as to all issues raised in the second action that were actually and necessarily determined in the prior action. (*Todhunter v Smith (1934) 219 C 690, 695*) The party claiming the defense of collateral estoppel has the burden of proof. (*McMillen Dev. v Home Buyers Warranty (1998) 68 CA4th 896, 906-907*) At the time of the entry of the summary adjudication order, on which the subsequent judgment and the State Farm claim of collateral estoppel is based, Weir and Pyorre were not parties of record as to the cause of action on which that adjudication was based. However, State Farm contends that because the defendants could have raised and pursued the termination language issue to final adjudication in the prior action, they are now collaterally estopped from raising that issue in this action. (*Sutphin v Spelk (1940) 15 C2 195, 202*) However, the apparently broad scope of the language in *Sutphin* refers only the resolution of issues that might have been raised in the prior adjudication order to sustain or to defeat the determination made in that action. (*Henry v Clifford (1995) 32 CA4th 315, 320-321; Pac. Mut. Life Ins. Co. v McConnell (1955) 44 C2715, 724*) The construction of the termination language was an issue factually and legally distinct from the other causes of action to which Weir and Pyorre were parties and which were pursued to final judgment on their behalf. The doctrine of collateral estoppel, therefore, does not operate to preclude Weir and Pyorre from seeking the construction of the termination language in this action.

**Privity of Parties:** The third element for the application of collateral estoppel as enunciated in *Bernhard v Bank of America, supra, 19 Cal. 2d 874* requires that the party against whom the plea is asserted be either identical to or in privity with the party in the prior adjudication. Privity has been defined generally as a relationship between such parties (in the present action and the prior adjudication)

which is "sufficiently close" so as to justify the application of the doctrine of collateral estoppel. Due process requires a community or identity of interests between the parties, adequate representation of the nonparty by the losing party in the prior action and a reasonable expectation by the nonparty that it would be bound by the prior adjudication. (*Lynch v Glass* (1975) 44 CA3d 943, 947-948)

Upon review of the circumstances involved in the prior adjudication and the present action, the court finds that the application of collateral estoppel against Wier and Pyorre would constitute the denial of due process. In its January 7, 2000 order granting summary adjudication in favor of State Farm, finding that termination language could not be construed to require a showing of cause, the court specifically determined that Wier and Pyorre were *not* parties to that adjudication. The court based that determination on its stated observations that the supplemental complaints of Wier and Pyorre, in which the construction of the termination language was raised, had not been served on State Farm and that Wier and Pyorre had previously advised the court on December 14, 1999, some five weeks *prior* to the ruling, that the supplemental complaints would be dismissed. ( See order denying/granting cross motions for summary adjudication (14: 25, fn. 2), Exhibit 30 to State Farm's September 8, 2000 Request for Judicial Notice [hereinafter: "9/8/2000 RJN"].) The order allowing the filing of the Wier/Pyorre supplemental complaints was entered on September 15, 1999 (Exhibit 28, 9/8/2000 RJN). By that time, substantially all of the pleadings relative to the then-pending cross-motions for summary adjudication had already been filed. ( Exhibits 5-27, 9/8/2000 RJN) The record does not indicate the filing of any pleadings relative to the cross-motions *after* the filing of the supplemental complaints. Even though Weir and Pyorre were *named* as moving parties on the August 12, 1999 motion for partial summary adjudication (Exhibit 5, 9/8/2000), their supplemental complaints were not filed until on or after September 15, 1999 and plaintiffs have not produced any evidence from which it could be determined that Weir/Pyorre were actively involved or adequately represented in the other plaintiffs' summary adjudication motion prior to the filing of their supplemental complaints. In consideration of the order of the pleadings as summarized above and the enuntiated decision of Weir and Pyorre to dismiss their supplemental complaints (which was stated some five weeks *prior* to the court's adverse order), the court cannot find that Wier and Pyorre had the reasonable expectation that they would be bound by the eventual ruling on the cross-motions for summary adjudication.

In determining whether to apply collateral estoppel, the court must balance the rights of the parties against various factors, including the promotion of judicial economy and the prevention of inconsistent judgments. (*Clemmer v Hartford Ins. Co.* (1978) 22 C3d 865, 875) The court notes that the present motion is based upon a substantial amount of evidence which was not before the court in the prior adjudication. In consideration of all of the factors enuntiated by the *Bernard*, *Clemmer* and *Lynch* courts, this court finds that the application of collateral

estoppel to prevent Weir and Pyorre from litigating in this action the construction of the contract termination language would constitute a denial of their due process.

**Construction of Contract Language:**

Both parties have repeatedly and cavalierly ignored the rules of pleading, the rules of court and common sense in their voluminous pleadings. They have unnecessarily complicated and obfuscated what was a complex matter in the first place. The cumulative page total of the memoranda filed by both parties well exceeds the limitations of CRC 313 (d). Plaintiffs filed a supplemental memorandum (3/7/01) supported by approximately seventy-five pages of deposition transcript without anything even remotely resembling the required statement of undisputed facts. Defendants filed a series of four statements identifying an astounding 275 undisputed material facts in addition to the 70 initially identified by plaintiffs. Notwithstanding the zeal of an advocate, 345 purportedly material disputed facts seem just a little excessive for a case of this type. A substantial number of the "material" facts are obviously not material to the issues raised.

**Judicial Notice:** Subject to the rulings on the evidentiary objections as set forth below, the requests for judicial notice are granted.

**Evidentiary Objections:**

The following of the objections of plaintiffs to the declarations of Weir and Pyorre are sustained: 4, 5, 6, 11, 14, 15, 21, 22, 26, 27, 31, 32, 34, 35, 36 and 38.

Defendants' objection (3/27/01) to the consideration of any of the facts included within the attachments to the supplemental declaration of George E. Yuhas filed 3/7/01 is granted. No statement of facts was filed in reference to the attachments, consisting of approximately seventy-five pages of deposition testimony. In the determination of a motion for summary judgment, the court cannot consider facts which are not specifically set forth in a separate statement of facts. (*United Community Church v Garcin (1991) 231 CA3d 327, 335-337*) In reviewing the memoranda of both parties, the court will consider only those evidentiary references that are made to any of the several statements of undisputed material facts. (345 facts should be sufficient to support almost any argument!)

In response to defendants' objections to plaintiffs' request for judicial notice, the court will take judicial notice of the existence of the referenced pleadings and the positions taken therein but not necessarily of the truth of the matters stated therein. (*Sosinsky v Grant (1992) 6 CA4th 1548, 1564-1569*) The court will take judicial notice of the truth of the matters asserted in orders and judgments, but not of hearsay statements contained in any document. (*Bach v McNells (1989) 207 CA3d 852, 864-865*)

The cross-motions are based on conflicting constructions of the termination provisions in the written agency agreements. (Although the defendants executed slightly different forms of the same basic agreement [Pyorre using Form AA-3 and Wier using Form AA-4], the language relevant to the issues in this matter is identical in both agreements.) In construing the terms of the contract, the court must give effect to the mutual intent of the parties at the time of the contract. (*CC Sec. 1636*) Where a conflict is based upon the meaning of specific terms in an integrated, written agreement, the court cannot restrict its review to the terms used in the contract but must preliminary consider relevant extrinsic evidence, if any is offered, to determine if the language used is reasonably susceptible of the interpretation offered. In this inquiry, extrinsic evidence may only be considered as an aid to interpret the meaning of the contract and not to add to or change its terms. If the court then determines, in light of all the circumstances, that the contract is reasonably susceptible of either of the two offered meanings, extrinsic evidence may then be admitted to prove either of the two meanings. (*Pacific Gas and Electric v Thomas Drayage Etc. Co. (1968) 69 C2d 33, 37-40*) In construing the meaning of contract language the court may consider such extrinsic evidence as the circumstances under which it was made (*CCP 1860*) and the conduct of the parties during the period from the formation of the contract to time of dispute. (*Crestview Cemetery Ass. v Dieden (1960) 54 C2d 744, 754*) The court may also consider the subsequent words and conduct of a single party even though the other party had no contemporaneous knowledge of the words and conduct and did not rely on them. (*So. Cal. Edison Co. v Sup. Ct. (1995) 37 CA4th 839, 851*)

Plaintiffs' motion is based primarily on the argument of collateral estoppel and their seventy undisputed material facts refer almost exclusively to pleadings, orders and judgments entered in the prior *Applying* litigation. Numerous declarations, deposition transcripts and various documents are attached as exhibits to those various pleadings. For the purpose of this motion, the court has examined only those exhibits specifically identified in plaintiffs' statement of undisputed material facts. The court has reviewed the identified pleadings and the following documents which were specifically identified in plaintiffs' statement of undisputed facts by reference to 9/8/00 RJN, Tab 27.

1. Contract language: AA 660, Sec III (1) and (2); and AA-3 and AA-4, Sec. III (A) and (B).
2. A section from a State Farm internal manual entitled "Purpose and Concept of the Termination Review Plan" dated 4/1/76. ( 8/9/00 RJN, Tab 7)
3. Declaration of Gerald Robison: paragraphs 3 and 4 and Exhibit A. (8/9/00 RJN, Tab 15)

4. **Declarations of S. Brick and George Yuhas: those paragraphs and exhibits identified in the 8/9/00 RJN, Tab 27 as facts 62-74.**

The court also reviewed the September 13, 1999 Declaration of Roger S. Joslin (RJN, Tab 24) and that portion of the transcript of Mr. Joslin's December 13, 2000 deposition which is attached as Exhibit A to the March 7, 2001 Yuhas Declaration.

Defendants contend that the contract termination language, when examined in light of the termination review procedure, (Contract, Section III, Paragraphs A and B) compel the construction that the contract can be terminated only for cause. In support of their position, defendants urge the court to consider at least the following evidence:


1. The standard agency agreement used by State Farm (Form LA 540) prior to the development and adoption of the two forms executed by Pyorre and Wier. (RJN, Tab 6, Exhibit L)
2. A 12/23/65 State Farm publication "The President's Letter" containing a brief discussion of the termination review plan found in the revised agent's contract. (RJN, Tab 19, Exhibit U)
3. A section from "Reflector" (a State Farm publication sent to all agents (Joslin Depo. 27:22)) discussing the termination procedure and agency protection. (RJN, Tab 6, Exhibit K) The article was written by Earle B. Johnson, who was one of the four or five State Farm executives who drafted the AA 660 contract (UMF 111-112: Joslin Depo. 8:22)
5. Excerpts from the Dec. 13, 2000 deposition testimony of Roger Joslin who was one of the State Farm executives who jointly drafted the AA 660 contract. (UMF 114, 115, 123)
6. Excerpts from the January 1 2001 declaration of Henry Keller who was also a member of the same contract drafting group as was Joslin. (UMF 192, 193, 196, 198)
7. Excerpts from the declarations of Wier and Pyorre filed September 22, 2000.

Based upon the extrinsic evidence identified above, the court finds that the termination language, especially when considered in light of the contractual termination review procedure, is reasonably and fairly susceptible of the construction that good cause is required for termination. The court finds that the various statements made by State Farm executives after the development of the contract language but before the inception of the present dispute may be persuasive in determining the meaning and intent attributed by State Farm to the contract at the time the contract language was first developed. Where, as here, the interpretation of the contractual language turns on the question of the credibility of conflicting extrinsic evidence, it becomes the jury's responsibility to resolve any conflict in the extrinsic evidence and to base its interpretation of the contract upon those findings. (*Morey v Vannuci* (1998) 64 Cal4th 904, 912-913)

**Determination**

1. The motion of plaintiffs' for summary adjudication of the first and second causes of action in the cross-complaint is denied.
2. The motion of Weir and Pyorre for summary adjudication as to the thirteenth affirmative defense to their cross-complaint is granted.

**Dated: July 3, 2001**

  
**RICHARD J. HENDERSON**  
Judge of the Superior Court

**Copies to Counsel:**

**Steven A. Brick  
Thomas S. Brigham  
William P. Tedards  
Ryan F. Perkins**

**I, YOLANDA NUNEZ, DECLARE:**

I am employed in the County of Mendocino, State of California; I am over the age of eighteen years and not a party to the within action. My business address is P.O. Box 996, Ukiah, California, 95482.

I am familiar with the County of Mendocino's practice whereby each document is placed in an envelope, the envelope is sealed and placed in the office mail receptacle. Each day's mail is collected and appropriate postage affixed thereto and deposited in a U.S. mailbox at or before the close of each day's business.

On the date of this declaration, I served copies of the attached document on the below listed persons by placing a true copy thereof in the United States Mail, addressed as follows

Steven A. Brick, Esq. Attorney at Law, 400 Sansome Street, San Francisco, CA 94111-3143

Thomas S. Brigham, Esq. Attorney at Law, 387 N. State Street, Ukiah, CA 95482

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Ryan F. Perkins, Esq., Attorney at Law, P.O. Box 2655, Fort Bragg, CA 95437

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was made on the 3rd day of July, 2001.

  
Yolanda Nunez