

NO. 2010-C-0709

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

MALONEY CINQUE, L.L.C., ET AL.

VERSUS

PACIFIC INSURANCE COMPANY, LTD., ET AL.

IN RE: PACIFIC INSURANCE COMPANY, LTD., ET AL.

APPLYING FOR: SUPERVISORY WRIT, EXPEDITED CONSIDERATION

DIRECTED TO: HONORABLE ETHEL SIMMS JULIEN
CIVIL DISTRICT COURT, ORLEANS PARISH
DIVISION "N-8", 06-7842

WRIT GRANTED; STAY DENIED AS MOOT

Relator, Pacific Insurance Company, Ltd., seeks reversal of the trial court's denial of summary judgment as to plaintiffs' claim that a co-insurance provision in their surplus line carrier insurance policy is void in violation of former La. Rev. Stat. §22:694¹ (now §22:1317). At issue is applicability of the recent amendments to La. Rev. Stat. §22:1317² by Acts 2009, No. 250, § 1, eff. August 15, 2009 (S.B. 290).

¹ The prior version of La. Rev. Stat. §22:1317, then numerated as §22:694, provided:

No policy of fire, lightning, or windstorm insurance covering property or risks in this state shall contain any clause or provisions requiring the insured to take out or maintain a larger amount of insurance than that covered by such policy or providing in any way that the insured shall be liable as a co-insurer with the insured unless such clause has been approved by the fire insurance division and there has been a consideration allowed in the rate of premium charged for such policy.

² The current version of La. Rev. Stat. §22:1317 now provides:

No policy of fire and extended coverage insurance issued by an authorized insurer covering property or risks in this state shall contain any clause or provisions requiring the insured to take out or maintain a larger amount of insurance than that covered by such policy or providing in any way that the insured shall be liable as a co-insurer with the insured unless such clause has been approved by the commissioner of insurance and there has been a consideration allowed in the rate of premium charged for such policy.

In absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary. La. Civ. Code art. 6.

First, we must ascertain whether in the enactment the legislature expressed its intent regarding retrospective or prospective application. If the legislature did so, our inquiry is at an end. If the legislature did not, we must classify the enactment as substantive, procedural or interpretive. *Sudwisher v. Estate of Hoffpauir*, 97-0785 (La. 1997), 705 So.2d 724, 728. Substantive laws are laws that impose new duties, obligations, or responsibilities upon parties, or laws that establish new rules, rights and duties or change existing ones. Interpretive laws clarify the meaning of a statute and are deemed to relate back to the time that the law was originally enacted. Procedural laws prescribe a method for enforcing a substantive right and relate to the form of the proceeding or the operation of laws. *Id.*, 705 So.2d at 729.

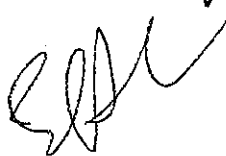
La. Rev. Stat. §22:1317 was amended to “exempt surplus lines insurers from provisions regarding co-insurance clauses.” La. Bill Hist., 2009 Reg. Sess. S.B. 290. A review of the legislative discussion pertaining to this amendment reveals that the legislature intended to “clarify that the current interpretation of the law [which] is surplus lines insurers are exempt from any type of rate or form filing requirements.” Furthermore, a review of S.B. 290’s adoption shows that the amendment “re-enacts what has always been the intention of legislation, in excluding surplus lines from co-insurance provisions.”

It is clear from legislative expression that S.B. 290 was reactive to *Resin Systems, Inc. v. Pacific Ins. Co.*, 2007 WL 1232206, unpub. (W.D.La. 4/25/07). The statements made during passage of S.B. 290 reveal that the legislature had always intended that surplus line carriers be exempt from the co-insurance clause

requirements set forth in La. Rev. Stat. §22:1317, and that the amendments proposed merely clarified this long-held position. Therefore, the current version of §22:1317 is an interpretive law to be applied retroactively.

Because relator, as a surplus line carrier, is exempt from the requirements of §22:1317, plaintiffs' remaining arguments against summary judgment are without merit. Because there is no genuine issue of fact that relator is exempt by law from the co-insurance provisions of La. Rev. Stat. §22:1317, relator is entitled to judgment as a matter of law on the enforceability of the co-insurance provision. La. Code Civ. Proc. art. 966(B). The motion for partial summary judgment is granted, and the request for stay is denied as moot.

New Orleans, Louisiana this 19th day of May, 2010.



JUDGE EDWIN A. LOMBARD



JUDGE CHARLES R. JONES



JUDGE MAX N. TOBIAS, JR.

