California Court Rules Employer Had No Right to Eliminate Reduced Sales Quotas for Senior Agents

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In a case brought by insurance agents, the California appeals court has ruled that an employer may not unilaterally eliminate certain obligations to employees contained in a policy that did not have an indefinite duration. *McCaskey v. California State Auto. Ass'n*, No. H032186 (Cal. Ct. App. Oct. 29, 2010). Reversing summary judgment for the employer, the Court held that a triable issue of fact existed regarding the duration of the policy and allowed the case to proceed to trial.

The Court said that under California law (*Asmus v. Pacific Bell*, 23 Cal. 4th 1 (Cal. 2000)), an "employer could unilaterally terminate its duty to honor the policy provided certain circumstances were present: 'An employer may unilaterally terminate a policy that contains a specified condition, if the condition is one of indefinite duration, and the employer effects the change after a reasonable time, on reasonable notice, and without interfering with the employees' vested benefits.'"

Compensation Plans

Plaintiffs John Mellen, Francis McCaskey, and Charles Luke began working for California State Auto Association ("CSAA") as sales agents in 1969, 1971, and 1976, respectively. They each signed an employment agreement providing that commissions would be paid in accordance with CSAA's compensation plan. The company had reserved the right to modify the plan at any time.

In general, the compensation plan provided for minimum sales quotas. Failure to meet the quotas could result in discipline or termination. When an agent reached age 55 with at least 15 years of service, the sales quotas would be reduced by 15 percent for that agent. The quotas would be reduced by a further 25 percent for agents who reached 60 with 20 years of service. This compensation plan remained in effect through 2000, when the Plaintiffs all qualified for the quota reductions because of their age and years of service.

In early 2001, CSAA adopted a new compensation plan that eliminated the sales quota reductions. Failure to meet the quotas could "lead to corrective action up to and including termination." Declining to sign the plan, the Plaintiffs retained counsel. CSAA ultimately agreed not to terminate the Plaintiffs for failing to sign, and the Plaintiffs agreed that the plan's terms would govern their compensation.

In 2005, CSAA terminated McCaskey for failing to meet his sales quota. Thereafter, CSAA issued a revised compensation plan. Luke and Mellen again refused to sign because it did not include quota reductions for senior agents, and CSAA terminated their employment.

Indefinite Duration?

The Plaintiffs sued CSAA for, among other things, breach of contract. CSAA moved for summary judgment, which the trial court granted. The Plaintiffs appealed.

CSAA argued on appeal that the compensation plan was for an indefinite duration and the company had the right to eliminate it unilaterally under California law established in *Asmus v. Pacific Bell.* The Plaintiffs argued that *Asmus* did not apply here because the compensation plan took effect at a specific time, i.e., when they reached age 55 with 15 years of service, and was not subject to a condition of indefinite duration.

The Court did not find either argument compelling. It said that rather than last for an indefinite duration, as CSAA argued, the plan's terms suggested "an *implied-in-fact* durational term by which CSAA's duty to honor the policy would end, as to a qualifying employee, either (1) at age 65, (2) after 10 years, or (3) upon the employee's retirement." The plan's first reduced quota became effective only after the employee attained age 55 with 15 years of service, and the second became effective five years later. The Court said the second reduction could be interpreted as lasting for five additional years, until the employee attains age 65, the "the usual retirement age." This interpretation would be consistent with the plan's apparent underlying purpose of retaining loyal employees to the ends of their working lives, the Court declared.

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The Court said, "[T]he structure of the benefit, coupled with its purpose, would readily yield a finding that the policy was to be honored at least until the agent qualifying for it reached 65. This possibility, if borne out at trial, will take the case outside the rule of *Asmus*, which applies only where there is no basis to determine the parties' *actual intent* as to duration."

Moreover, under California law, "a contract of 'indefinite duration' is 'terminable after a reasonable time on reasonable notice,'" the Court said. Thus, even if *Asmus* applied in this case because the policy was found to be one for an indefinite duration, CSAA must demonstrate that it sought to terminate the policy after a "reasonable time." This, the Court observed, CSAA thus far has failed to do. The Court saw "no basis to conclude that CSAA had honored the policy for a reasonable time." Therefore, the Court concluded that summary judgment was improperly granted on the basis of *Asmus*.

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The California appeals court's decision may limit an employer's ability to modify its policies, even though it may have expressly reserved the right to do so. Employers should review their policies with counsel to determine whether potential modifications can enhance enforceability.