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BEFORE THE INSURANCE COMMISSIONER

OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of **GRENADA FACILITY, INC., DBA GRENADA RESIDENTIAL CARE FACILITY,** Appellant, From a Decision of **WORKERS' COMPENSATION INSURANCE RATING BUREAU OF CALIFORNIA,** **Respondent.**	**FILE NO. AHB-WCA-01-3**

PROPOSED DECISION

Introduction

The dispute underlying this appeal arises over the rates charged for the workers' compensation insurance policies of Grenada Facility, Inc., dba Grenada Residential Care Facility (Grenada or Appellant). The policies, numbers 1562908 and 1592863-2, were issued by Appellant's worker's compensation insurance carrier, State Compensation Insurance Fund (SCIF), for the 2000 and 2001 policy years. The rates charged were based in part on the experience modifications assigned to Appellant by the Workers'

Effect of Rescission on Appellant's Experience Modification

Appellant contends that as a result of Carroll's and Hendeles' rescission of the April 10, 2000 Grenada stock transfer, the resulting experience modifications that existed before April 10, 2000 must be restored by the Rating Bureau. Appellant offers no support for this contention.

The stock transfer agreement was a contract between Hendeles and Carroll only, and they are the only ones who can rescind it. "A contract is extinguished by rescission." (1 B.E. Witkin, Summary of Cal. Law, "Contracts," § 869 (9th ed. 1987 & Supp. 2001) (citing California Civil Code section 1688).) "Rescission not only terminates further liability but *restores the parties to their former position by requiring each to return whatever he received* as consideration under the contract, *or, where specific restoration cannot be had, its value*." (*Id.*) (Emphasis added).

Here, the rescission was mutual. When a mutual consent rescission occurs, ". . . the parties to an existing contract discharge and terminate their duties under it. . . . The legal effect of a rescission . . . is the discharge of all rights and duties on the part of both parties with respect to the contract that has been rescinded." (5A A.L. Corbin, Corbin on Contracts, "Rescission," § 1236, 1964 & Supp. 2001.)

However, their agreement made no provision at all for the increased premiums resulting from the new experience ratings that were promulgated as a result of Grenada's ownership changes.

> [A] party who wishes to rescind a contract *must place the opposite party in status quo*. An attempted restoration of the status quo is an essential part of the rescission of a contract, and . . ., a party cannot rescind and at the same time retain the consideration, or a part of the consideration, received under the contract. *One cannot have the benefits of rescission without assuming its burdens*. The *rule of restoration applies where a party wishes to rescind a contract* for fraud *or other cause, and applies even though a rescission agreement is silent as to restoration of the status quo*. (17A Am. Jur. 2d, "Contracts," § 590 (2d ed. 1991 & Supp. 2001).) (Emphasis added).

It is the general rule that in case of a mutual abandonment of a contract, or its rescission, the amounts paid may be recovered. (*Farmers' & Merchants' National Bank of Los Angeles v. Bailie* (1934) 138 Cal. App. 143, 148.)

In the process of implementing their rescission, as to the responsibility of each of them to return the other to the status quo, Carroll and Hendeles ignored the effect of the newly promulgated experience ratings that resulted from Carroll's ownership of Grenada from April 10, 2000 to January 29, 2002. Instead of looking to each other to be responsible for restitution or restoration, Carroll and Hendeles argue that a third party, the Rating Bureau, who was not a party to the contract they rescinded, should "undo" the experience ratings that resulted from the April 10, 2000 Grenada stock transfer and its rescission, the January 29, 2002 stock transfer, and their rescission agreement. There is no authority cited for Appellant's position.

Moreover, the Rating Bureau has no authority to do what Appellant requests. The Rating Bureau cannot act solely as a result of a contract or a rescission of a contract between individual parties. The Rating Bureau is only authorized act pursuant to the rules of the Rating Plan. (California Insurance Code section 11750.3; and see Footnote 1 above). Here, in determining whether Grenada's past experience would apply with each change of Grenada's ownership, the Rating Bureau was only authorized to determine

whether a material change in ownership accompanied a material change in operations with each change of Grenada's ownership. Similarly, the Rating Bureau was only authorized to determine whether Grenada's and College Hill Guest Home's experience ratings were combinable during the period of time that Carroll concurrently owned both businesses. Appellant provides no citation for extending the Rating Bureau's authority to its request, because there is none.

Case law confirms this premise. In *Randall v. Loftsgaarden*, (1996) 478 U.S. 647, 655-660, the U.S. Supreme Court did not order a governmental agency, the IRS (which was not a party to the contract at issue) to act as a result of the parties' rescission of an investment contract. In the *Randall* case, the Court held that a tax benefit that had been earned by one of the parties during the contract was still earned, even though the contract under which the tax benefit was earned had later been rescinded. The Court did not, by virtue of the rescission, order the IRS to take away the tax benefit accorded to the investors while they held the investment at issue. The only issue was how the parties to the rescinded contract were to restore each other to the status quo.

The return of Carroll to the status quo, that is, compensating her for the increased premiums that she incurred as a result of the experience rating that applied to Grenada and College Hill Guest Home during Carroll's concurrent ownership of both, is a matter that can only be addressed between Carroll and Hendeles. Under the facts herein, the Rating Bureau cannot return Carroll or Hendeles to the status quo with regard to the experience ratings.