

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 12/16/2016

TIME: 04:42:00 PM

DEPT: C-69

JUDICIAL OFFICER PRESIDING: Katherine Bacal

CLERK: Jay Browder

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: Bryan Bagnas

CASE NO: **37-2016-00041469-CU-MC-CTL** CASE INIT.DATE: 11/23/2016

CASE TITLE: **State Farm General Insurance Company vs Dave Jones, California Insurance Commissioner [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 12/16/2016 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

State Farm General Insurance Company's ("State Farm") motion for stay is granted in part and denied in part.

Preliminary Matters

As the Court did not give permission for the filing of *amicus* briefs, it has not considered the brief filed on behalf of purported *amicus curiae*.

State Farm's relevancy objection to Nikki McKennedy's declaration and attached Exhibit A is sustained. State Farm's objections to Isabel Spiker's declaration are overruled.

Background and Discussion

In December 2014, State Farm submitted a request to increase its homeowners' insurance rates by 6.9%. Petition, ¶ 3. On November 7, 2016, the California Insurance Commissioner ordered a 7% rate reduction retroactive to July 15, 2015. *Id.* State Farm filed a petition for writ of mandate and complaint asserting, among other things, that the Commissioner improperly attributed income to State Farm from its affiliate's assets and the Commissioner has no authority to order refunds once a rate has been approved.

As clarified at oral argument, State Farm seeks a stay of the rate reduction and refund order or a stay of either of these orders, pending judicial review of the decision.

The Court may not grant a stay that is "against the public interest." Code Civ. Proc., § 1094.5, subd. (g). Proposition 103 was adopted to ensure that insurance is "fair, available, and affordable for all

Californians." *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 981. To that end, the Commissioner must approve insurance rates. Once the Commissioner's decision is final, an insurer must charge only the approved rate. *Id.* at 982.

State Farm argues the public has an interest in insurance rates that reflect the investment income actually available to support the payment of claims. The Commissioner, who is charged with protecting the public interest, was apparently persuaded that the new rate was sufficient to ensure that claims would be paid. If the rate reduction order were stayed, consumers would be required to continue paying rates that the Commissioner found to be excessive. In this regard, a stay contravenes the public interest that Proposition 103 was intended to protect. The Court declines to impose a stay of the rate reduction order.

State Farm also argues that staying only the refund order would not contravene public interest. Opposing parties argue that State Farm has not met its burden for a stay, citing *Board of Medical Quality Assurance v. Superior Court* (1980) 114 Cal.App.3d 272. However, the *Board of Medical Quality* case dealt with Code of Civil Procedure Section 1094.5, subsection (h)(1). This subsection requires a court to be satisfied, before imposing a stay, that the public interest will not suffer *and* that a licensed hospital or agency is unlikely to prevail on the merits. Subsection (g) of Section 1094.5, applicable here, has no requirement related to the merits. Instead, it appears that it is the party opposing the stay who must show that such a stay is against the public interest.

It is true that if a stay is imposed and State Farm does not ultimately prevail, some policy holders might not be located in order to provide them with the refunds due to them. However, potential harm to individual policy holders is not the same as harm to the public interest. In fact, the Court can make appropriate orders protecting the public interest if such individual policy holders could not be located. Other than the potential for some policy holders to be "lost," there is no real harm in delaying payment of relatively small refunds, especially if policy holders would eventually be paid in full, with interest. Thus, the Court grants a stay only of the portion of the Commissioner's order requiring refunds to be paid.



Judge Katherine Bacal