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## **California court finds insurer temporarily estopped from relying on contracting clause in RCV policy**

By Samuel H. Ruby

In *City of Hollister v. Monterey Insurance Company*, --- Cal. App. 4<sup>th</sup> --- (2008), a California Court of Appeal has affirmed a declaratory judgment allowing an insured additional time to contract for the replacement of a building and make a replacement cost claim. The court's opinion clarifies the application of the doctrine of estoppel in insurance coverage actions and interprets insurance regulations that have not previously been judicially construed.

Monterey's policy allowed the City of Hollister to recover "the cost to replace the damaged building" with a "functionally equivalent" building, but only if the City "contract[ed] for repair or replacement" within 180 days of the loss. The City suffered the total loss of one of its buildings and gave Monterey notice of the loss, but the City did not contract for the replacement of the building within 180 days. When Monterey refused to extend the time limit, the City filed an action for declaratory relief.

The trial court found that Monterey's conduct in the course of handling the claim had "prevented [the City] from entering into a contract." On that basis, the trial court found Monterey temporarily "estopped from enforcing or otherwise relying on the 180-day provision." The trial court issued a declaratory judgment allowing the City 180 days from the date of the judgment to enter into a contract for the replacement of the building. Monterey appealed.

In a 73-page opinion, the Court of Appeal affirmed. In extraordinary detail, the appellate court took Monterey to task for not "communicat[ing] constructively" with the City regarding the benefits available under the policy and the time limits for perfecting a claim for those benefits. Explaining and applying principles of the doctrine of equitable estoppel, the court agreed with the trial court that it would be unfair under the circumstances to allow Monterey to deny replacement costs benefits based on the contracting clause.

The court did not, however, wholly relieve the City of the conditions to the replacement cost coverage. The court affirmed the declaratory judgment, thus requiring the City to comply with the contracting condition when the litigation is over. Awarding no money to the City, the court implicitly held that the City will still have to replace the building in order to recover on a replacement cost basis. The decision simply keeps the City's potential replacement cost claim alive.

The decision is noteworthy not only for its extensive discussion of the doctrine of estoppel in the context of insurance coverage actions, but also for its construction of several insurance regulations that had not previously been addressed in a published opinion.

Update: As modified after denial of rehearing, the opinion is now published as 165 Cal. App. 4<sup>th</sup> 455, 81 Cal. Rptr. 72.