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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

NORCAL MUTUAL INSURANCE COMPANY, Plaintiff and Appellant, v. CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, et al., Defendants and Respondents.	B213122 (Los Angeles County Super. Ct. No. BC371822)

APPEAL from a judgment of the Superior Court of Los Angeles County, Malcom H. Mackey, Judge. Affirmed in part, reversed in part, and remanded.

White and Williams and Thomas A. Allen; Cole Pedroza, Matthew S. Levinson and Kenneth R. Pedroza for Plaintiff and Appellant.

Paul K. Schrieffer, Rena M. Stone and Steven C. Schwartz for Defendants and Respondents.

INTRODUCTION

Plaintiff NORCAL Mutual Insurance Company (NORCAL) appeals from an order of dismissal entered following a grant of summary judgment in favor of defendants and respondents, Certain Underwriters at Lloyd's of London, CNA Reinsurance Company Limited, and Terra Nova Insurance Company, Limited (respondents). Respondents reinsured NORCAL for any liability NORCAL might incur under a managed health care professional liability policy issued by NORCAL for the initial policy period of August 1999 through August 2000 (the 1999/2000 policy). After respondents denied NORCAL'S claim for reinsurance, NORCAL sued respondents for breach of contract, insurance bad faith, and negligence. In granting summary judgment, the trial court reasoned that NORCAL'S claim for reinsurance was not based on liability arising under the 1999/2000 policy, because the claim by NORCAL'S insured that created the NORCAL'S liability fell outside the period of the 1999/2000 insurance policy. NORCAL contends that the policy period was extended by operation of law until June 2001 because its insured was not provided with notice of nonrenewal of the 1999/2000 policy, as required by Insurance Code section 678.1. Therefore, the claim made by the insured in February 2001 fell within the policy period, and respondents were obligated under the reinsurance contract to indemnify NORCAL.

Because we agree with NORCAL regarding the interpretation and application of Insurance Code section 678.1, we reverse the judgment to the extent that it granted summary adjudication as to NORCAL's causes of action for breach of contract and insurance bad faith However, because we conclude that Insurance Code section 678.1 places the obligation to provide an insured with notice of nonrenewal on the insurer, in this case NORCAL, we affirm the grant of

summary adjudication as to NORCAL's cause of action alleging respondents negligently failed to provide NORCAL's insured with notice of nonrenewal.

FACTUAL AND PROCEDURAL BACKGROUND

NORCAL's Health Care Professional Liability Insurance Program

NORCAL created a program in which NORCAL issued managed health care professional liability policies to its insureds, and the reinsurers reinsured NORCAL for 100 percent of the amounts NORCAL incurred with respect to each policy. There were several reinsurers who took part in this program, including among others the respondents here. The identity of the reinsurers providing reinsurance for the policies issued under the program varied. With regard to the two policies discussed in the present action (the 1999/2000 policy and the 2000/2001 policy), respondent Lloyd's provided reinsurance as to both, but the other respondents provided reinsurance as to only one, the 1999/2000 policy described below.

NORCAL's insurance program worked as follows. When a prospective insured applied for a policy, the insured's application would be submitted to Medical Risk Management Insurance Services (MRMI), a joint venture created by NORCAL with Cooperative of American Physicians, Inc. ("CAP/MPT"), to act as NORCAL's insurance agent and handle NORCAL policy issuance, servicing, and renewals. MRMI would receive information from prospective insureds or their brokers and transmit it to the reinsurers through Carpenter Moore Insurance Services (Carpenter Moore) and Ballantyne, McKean & Sullivan (BMS). MRMI would then forward to prospective insureds (or their brokers) policy terms proposed by the reinsurers through Carpenter Moore and/or BMS. If an insured agreed to those terms, MRMI would issue a policy on NORCAL paper. MRMI would also collect premiums from the insureds. A reinsurance contract would be

created to cover NORCAL for the same risk covered by the NORCAL policy. The reinsurance would be evidenced by a "cover note" reflecting the coverage. NORCAL did not take an active role in underwriting under the program; all underwriting decisions were made by the reinsurers.

The NORCAL Policies Issued to Gallatin Medical Foundation

1. *The 1999/2000 Policy*

One of NORCAL's insureds under this program was Gallatin Medical Foundation (GMF).[1] As relevant here, MRMI issued a managed health care liability policy on NORCAL paper to GMF for the period August 27, 1999 to August 27, 2000 (the 1999/2000 policy). Respondents interacted with GMF through their intermediaries, with BMS, Carpenter Moore, and MRMI acting for the respondents with respect to the underwriting and negotiation of the terms and policy issuance, and GMF's broker, Willis, acting on behalf of GMF. Respondents agreed to enter into a reinsurance slip contract with NORCAL to provide reinsurance for the GMF policy. The 1999/2000 reinsurance contract provided: "This contract shall indemnify the reinsured [NORCAL] for all liability accruing to it in respect to the original policy issued by the reinsured covering Managed Healthcare Professional Liability and any other liabilities which arise from the handling by the Reinsurer of any claim."

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[1] Gallatin Medical Foundation changed its name in 2001 to Presbyterian Health Physicians. Nevertheless, we will refer to it as GMF throughout this opinion.

2. *Renewal Negotiations for the 2000/2001 Policy*

In August 2000, GMF's broker, Willis, undertook renewal discussions with MRMI to renew the NORCAL policy. The negotiations did not conclude by August 27, 2000. As an accommodation to GMF, MRMI requested from and was given authority by the respondents to extend the policy period until November 17, 2000. Corresponding agreements were obtained to also extend the reinsurance of the 1999/2000 NORCAL policy to GMF to November 17, 2000.

On November 15, 2000, MRMI relayed to GMF's broker, Willis, the proposed terms for renewal of the NORCAL policy, which included an increased policy deductible and an increased policy premium. Willis did not respond to the proposed renewal terms at the time the last policy extension expired on November 17, 2000.

On January 2, 2001, Willis, on behalf of GMF, requested that the renewal policy be bound on the proposed terms. However, Willis requested that the inception date of the renewal policy be January 1, 2001, rather than November 18, 2000 (the day after expiration of the extended policy period for the 1999/2000 policy). Paul Nelson of Willis wrote to Collins at CAP/MPT: "Please bind renewal of the subject policy for an annual term with a new effective date of 1/1/01 per the terms of your fax message dated 11/15/00 . . . . [¶] Please also process the endorsement extending the expired policy from 8/27/00 to 1/1/01 at a premium pro-rata of the expiring annual premium . . . . [¶] Thanks for your assistance and patience with this renewal. I look forward to receiving your binding confirmation as early as possible today." However, the renewed policy was not issued at that time.

The Lawsuit Against GMF, and the Renewal of the NORCAL Policy

On January 29, 2001, Gallatin Medical Corporation filed a lawsuit against GMF, among other defendants (LASC BC244144, hereafter "the *GMC v. GMF* action").

On February 16, 2001, MRMI sent to GMF's broker revised terms for the proposed renewal policy, which included an exclusion for any loss from the pending litigation between GMF and GMC, as well as an increased premium and deductible. That same day (February 16, 2001), GMF's broker instructed MRMI to bind the policy in accordance with the revised terms. MRMI bound the renewed policy, which was for the period November 18, 2000 to November 18, 2001 (the 2000/2001 policy).

On February 20, 2001, Willis tendered the *GMC v. GMF* action to NORCAL and other insurers for defense and indemnity. NORCAL lost or misfiled the tender letter, and therefore took no action.

In March 2001, MRMI received the "cover note" issued by the reinsurers evidencing the reinsurance for the 2000/2001 policy. A second, somewhat different group of reinsuring underwriters (the 2000/2001 reinsurers) had agreed to a reinsurance slip contract with NORCAL to provide reinsurance for the 2000/2001 policy. The cover note identified as a condition that the reinsurance policy would not apply to any known or reported losses prior to February 27, 2001.

On April 5, 2001, MRMI issued to GMF the 2000/2001 policy on NORCAL paper. However, the 2000/2001 policy as issued did not include an exclusion of the *GMC v. GMF* action or any other known or reported loss during the delayed renewal period.

GMF's Second Tender and NORCAL's Denial of Coverage

In February 2002, GMF, through its defense counsel in the *GMC v. GMF* action, re-tendered the *GMC v. GMF* action to NORCAL. Unaware of the prior tender in February 2001, which was within the reporting period for the 2000/2001 policy, NORCAL denied the claim under that policy as having been made outside the reporting period. In October 2002, GMF's insurance coverage attorney sent a letter to NORCAL's coverage counsel with evidence showing that GMF had tendered the claim in February 2001, which would make the tender timely under the 2000/2001 policy. NORCAL forwarded the information regarding the *GMC v. GMF* action to MRMI, which tendered the matter to the reinsurers for handling under the 2000/2001 reinsurance contract. However, NORCAL did not inform the 1999/2000 reinsurers of the claim at that time.

On the advice of counsel, NORCAL denied coverage in the matter. In a previous appeal, we affirmed the trial court's sustaining of a demurrer without leave to amend to NORCAL's complaint for professional negligence against its counsel. (*Norcal Mutual Ins. Co. v. Sedgwick, Detert, Moran & Arnold* (March 19, 2009, B203357) [nonpub. opn.].)

Settlement of GMC v. GMF, and the Lawsuit by GMF Against Its Insurers

On its own, GMF settled the *GMC v. GMF* action. In November 2003, GMF and its parent company, InterHealth Corporation, filed an action against various of its insurers entitled *InterHealth Corporation et al. v. Farmers Group, Inc., et al.* (LASC No. VC041385, the "*InterHealth* action"). NORCAL became involved in that action later, when another insurer and Presbyterian Health Physicians cross-complained against it. In June 2004, GMF asserted claims for breach of contract and bad faith against NORCAL, based upon its denial of coverage

under the 2000/2001 NORCAL policy. In December 2005, GMF amended its cross-complaint in the *InterHealth* action to add a claim under the 1999/2000 policy. At that time, GMF raised NORCAL's failure to issue notice of nonrenewal as to the 1999/2000 policy in violation of Insurance Code section 678.1, contending that NORCAL first provided notice of nonrenewal to GMF on April 5, 2001, and the policy period was therefore extended for 60 days thereafter, until June 2001.[2] Thereafter, GMF and NORCAL settled the *InterHealth* matter.

The Complaint at Issue Here Filed by NORCAL Against the Reinsurers

After settling the *InterHealth* action with GMF, NORCAL billed the 1999/2000 and the 2000/2001 reinsurers. In April 2007, the 1999/2000 reinsurers denied NORCAL's claim based on the assertion that section 678.1 did not apply to them as reinsurers.

NORCAL filed the present action in May 2007, stating causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, and negligence. NORCAL asserted as to the 1999/2000 reinsurers that they breached their contract and the implied covenant of good faith and fair dealing by refusing to indemnify NORCAL for the claims in the *GMC v. GMF* action and the

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[2] All further undesignated statutory references are to the Insurance Code.

Section 678.1 provides in relevant part as follows: "(b) A notice of nonrenewal shall be in writing and shall be delivered or mailed to the producer of record and to the named insured at the mailing address shown on the policy. . . . [¶] (c) An insurer, at least 60 days, but not more than 120 days, in advance of the end of the policy period, shall give notice of nonrenewal, and the reasons for the nonrenewal, if the insurer intends not to renew the policy, or to condition renewal upon reduction of limits, elimination of coverages, increase in deductibles, or increase of more than 25 percent in the rate upon which the premium is based. [¶] (d) If an insurer fails to give timely notice required by subdivision (c), the policy of insurance shall be continued, with no change in its terms or conditions, for a period of 60 days after the insurer gives the notice."

InterHealth action. NORCAL also contended that the 1999/2000 reinsurers were negligent because they failed to send a nonrenewal notice to GMF during the renewal process, advising GMF that renewal would be conditioned on a higher deductible than that in the 1999/2000 policy, as required by section 678.1.

The 1999/2000 policy under which GMF was insured by NORCAL is a "claims-made and reported policy," which provides as follows: "Except as otherwise provided herein, this Policy shall pay on behalf of the Insureds Loss sustained by the Insured resulting from any Claim first made against any of the Insureds during the Policy Period . . . provided such Claim is reported to NORCAL as soon as practicable but in no event later than 60 days after expiration of the Policy Period."

Respondents' Motion for Summary Judgment

Respondents argued in their motion for summary judgment or, in the alternative, for summary adjudication of issues, that NORCAL's action cannot be maintained because the underlying *GMC v. GMF* claim for which NORCAL sought reinsurance was made after the expiration of the 1999/2000 policy period. They argued that where policy renewal occurs without a lapse of coverage, section 678.1 requirements are satisfied, and notice of nonrenewal is not required. Respondents also argued that the exception found in section 678.1, subdivision (f)(3) to the requirement that an insurer give notice of nonrenewal, was applicable here. That subdivision provides that a notice of nonrenewal is not required where the named insured has obtained replacement coverage or has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage. They asserted that GMF, through its broker, had contacted MRMI on January 2, 2001, seeking acceptance of the terms previously offered for renewal of the NORCAL policy. The

new policy was issued with a commencement date of November 18, 2000, and therefore there was no gap in coverage. According to respondents, GMF thus agreed in writing to obtain coverage within 60 days of the November 17, 2000 termination date, and the statutory exception of section 678.1, subdivision (f)(3) applied as a matter of law.

Finally, respondents pointed out that pursuant to section 675.5, subdivision (d)(8), reinsurance contracts are not subject to the notice of nonrenewal requirements set forth in section 678.1. As such, respondents did not have an obligation to issue any notices of nonrenewal to NORCAL, the only party with whom they had a contract. Respondents contended that they did not breach any contractual duty owed to NORCAL, and therefore they also did not commit bad faith. Finally, they had no contractual or statutory duty to issue a notice of nonrenewal to GMF which would support NORCAL's cause of action for negligence. They were therefore entitled to the entry of summary judgment as to the three causes of action asserted by NORCAL.

NORCAL's Opposition to the Motion for Summary Judgment, and Respondents' Reply

NORCAL argued in opposition to the motion for summary judgment that respondents were prevented from contesting whether coverage existed under the underlying 1999/2000 policy based upon the fundamental reinsurance principle of "follow the settlements," (sometimes also called "follow the fortunes"). That principle states that a reinsurer cannot seek to avoid coverage by second-guessing the reinsured's coverage analysis and decision to settle a claim. (See *Zenith Ins. Co. v. O'Connor* (2007) 148 Cal.App.4th 998, 1007: ["[I]f the ceding insurer decides to settle and pay a claim, the reinsurer cannot raise coverage defenses to avoid paying its share of the loss. Absent fraud or collusion with the insured, the

reinsurer must 'follow the fortunes' of the ceding insurer on any claims under the policy"]; Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2009) ¶¶ 8:384-8:386, pp. 8-74 to 8-75.)

NORCAL also contended that the respondents had not definitively demonstrated that the 1999/2000 policy had expired as of November 17, 2000, three months before the claim was made and reported, and therefore GMF's claim was not covered under the 1999/2000 policy. NORCAL argued that, pursuant to section 678.1, the 1999/2000 policy period was extended until June 2001 because GMF, the named insured, did not receive direct notice of the conditional renewal terms until April 5, 2001. Furthermore, the writing dated January 2, 2001, in which GMF's broker requested renewal of the policy on the terms proposed by CAP/MPT (albeit with an inception date of January 1, 2001 rather than the proposed date of November 18, 2000), did not constitute an agreement to obtain "replacement coverage," which would have obviated the requirement to provide GMF with notice of nonrenewal, pursuant to section 678.1, subdivision (f)(3). NORCAL argued that "replacement" coverage refers only to a policy issued by a different insurer.

NORCAL contended that it was not included in or advised of the discussions or communications concerning the extension of the policy period or the renewal process. NORCAL asserted that the 1999/2000 reinsurers were therefore responsible for sending a non-renewal notice to GMF during the renewal process, advising GMF that a renewal would be conditioned on a higher deductible.

Respondents filed reply papers in support of their motion for summary judgment. They argued that the "follow the fortunes" rule did not apply because the *GMC v. GMF* claim was not covered under the 1999/2000 policy, and because the reinsurance agreement did not contain an express "follow the fortunes" clause.

The Trial Court's Ruling Granting Summary Judgment

After hearing oral argument, the trial court granted respondents' motion for summary judgment. As to the cause of action for breach of contract, the court concluded that section 678.1 did not extend the 1999/2000 NORCAL policy beyond November 17, 2000. The court relied on section 678.1, subdivision (f), which states that a notice of nonrenewal is not required where the insured has obtained replacement coverage. According to the court, GMF obtained replacement coverage in the form of the 2000/2001 policy, and had agreed to do so in writing. The court also noted that, in any event, section 678.1 does not apply to reinsurers (§ 675.5, subd. (d)(8)). The trial court rejected NORCAL's argument that "replacement" coverage as used in section 678.1, subdivision (f)(3), refers only to a policy issued by a different insurer. The trial court also ruled that the "follow the fortunes" principle does not apply in the absence of an express clause to that effect in the reinsurance contract.

As to the cause of action for breach of the implied covenant of good faith, the court found that respondents had not breached any contractual duties owed under the reinsurance contract. Finally, the court found that the cause of action for negligence was without merit, because the respondent reinsurers had no contractual, statutory, or legal duty to provide notice of nonrenewal and, as discussed above, no such notice was required.

This timely appeal ensued.

DISCUSSION

I. The Standard of Review

A. *Summary Judgment*

Summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment has the burden of showing that "one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) If the defendant does so, the burden then shifts to the plaintiff to show by admissible evidence that a triable issue of material fact exists. (*Ibid.*) We independently review the trial court's decision. (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 163.)

B. *Statutory Interpretation*

Interpretation of a statute is a question of law. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 699.) We conduct a de novo review of the trial court's decision. (*Bialo v. Western Mutual Ins. Co.* (2002) 95 Cal.App.4th 68, 76-77.) When the statutory language is clear, it governs. (*McPherson v. City of Manhattan Beach* (2000) 78 Cal.App.4th 1252, 1260.)

Our fundamental task in statutory construction is to "'ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by examining the language of the statute.' [Citation.]" (*People v. Cruz* (1996) 13 Cal.4th 764, 774-445; accord, *Medical Board v. Superior Court* (2001) 88 Cal.App.4th 1001, 1013.) "'When the language is clear and there is no uncertainty as to the legislative intent, we look no further

and simply enforce the statute according to its terms. [Citations.]' [Citation.] [¶] In examining the language of the statute, we must consider 'the context of the statute . . . and the statutory scheme of which it is a part. "We are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them.' [Citations.]" [Citations.] "'If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose.' [Citation.] . . . . 'When used in a statute [words] must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear.' [Citations.] Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. [Citations.]" [Citations.]' [Citation.]" (*Smith v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 117, 123-124.)

II. Interpretation and Application of Section 678.1

A. *Extension of the 1999/2000 Policy Period by Application of Law*

NORCAL contends on appeal, as it did in opposing respondents' motion for summary judgment below, that the *GMC v. GMF* claim, when reported by GMF in February 2001**,** was within the coverage period of the 1999/2000 policy. Although GMF was granted a contractual extension of the coverage period only through November 17, 2000 while renewal negotiations continued, NORCAL argues that the policy period was statutorily extended pursuant to section 678.1 because GMF was not given written notice that renewal of the policy would be conditioned upon an increase in the policy deductible. Section 678.1, which pertains to commercial insurance policies (§ 678.1, subd. (a)), requires that "[a] notice of nonrenewal shall be in writing and shall be delivered or mailed to the producer of record *and to the*

named insured at the mailing address shown on the policy." (§ 678.1, subd. (b), italics added.) Subdivision (c) specifies that "An insurer, at least 60 days, but not more than 120 days, in advance of the end of the policy period, shall give notice of nonrenewal, . . . if the insurer intends not to renew the policy, or to condition renewal upon . . . increase in deductibles, or increase of more than 25 percent in the rate upon which the premium is based."

It is undisputed that on November 15, 2000, MRMI relayed to Willis, GMF's broker and presumably the insurance "producer of record," the proposed terms for renewal of the NORCAL policy, which included an increased policy deductible and an increased policy premium.[3] However, notice that renewal of the policy would be conditioned upon an increased deductible and premium was not also delivered or mailed directly to the named insured, GMF, as required by section 678.1, subdivision (b).

Subdivision (d) of section 678.1 states the consequence of such failure to provide notice to the named insured of the conditions of renewal, as follows: "If an insurer fails to give timely notice required by subdivision (c), the policy of insurance shall be continued, with no change in its terms or conditions, for a period of 60 days after the insurer gives the notice." Respondents do not dispute that GMF first received direct notice of the policy changes from NORCAL when GMF was sent the 2000/2001 policy in April 2001. We therefore conclude that in

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3 While not strictly applicable to Part 1 of Division 1 of the Insurance Code in which section 678.1 is codified, section 2051 of the California Code of Regulations defines "producer of record" as follows: "For the purposes of this Article and Division 1, Part 2, Chapter 5, Article 12, of the Insurance Code [regarding conduct of licensees], the following definitions shall apply: [¶] (a) The term 'producer' means any person (including any partnership, association or corporation) licensed by the Commissioner in one or more of the following capacities: insurance agent, . . . insurance broker." (Cal. Code Regs., tit. 10, § 2051 [subch. 1, production of insurance].)

accordance with the plain meaning of section 678.1, subdivision (d), the 1999/2000 policy period was therefore continued by operation of law through June 2001. (See *National Auto. & Casualty Ins. Co. v. California Casualty Ins. Co.* (1983) 139 Cal.App.3d 336, 340-341 [finding extension of automobile liability insurance policy based on failure to provide timely notice of nonrenewal under similar provision, Ins. Code, § 663].)

However, respondents argue, and the trial court found, that section 678.1, subdivision (f)(3) applied, such that notice of nonrenewal was not required to be given. That subdivision provides that notice of nonrenewal shall not be required in several situations, including where "[t]he named insured has obtained replacement coverage or has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage." Respondents contend that GMF agreed in writing to obtain replacement coverage. They point to the fact that on January 2, 2001, Paul Nelson of Willis wrote to Adam Collins at CAP/MPT: "Please bind renewal of the subject policy for an annual term . . . per the terms of your fax message dated 11/15/00 . . . . [¶] Please also process the endorsement extending the expired policy from 8/27/00 to 1/1/01 at a premium pro-rata of the expiring annual premium . . . . [¶] Thanks for your assistance and patience with this renewal. I look forward to receiving your binding confirmation as early as possible today." The reinsurers contend that this constituted GMF's written agreement to obtain replacement coverage within 60 days of the November 17, 2000 termination date. We disagree.

The express language of section 678.1, taken as a whole, compels the conclusion that a "replacement" policy (subd. (f)(3)) is not synonymous with renewal of existing coverage. Section 678.1, subdivision (f) contains a different exception to the notice requirement where an insurer offers to *renew* a policy (see

subd. (f)(6) ["notice of nonrenewal shall not be required" where "[t]he insurer has made a written offer to the insured, within the time period specified in subdivision (c), to renew the policy under changed terms or conditions or at a changed premium rate"][4]). "'[W]hen *different* words are used in contemporaneously enacted, adjoining subdivisions of a statute, the inference is compelling that a difference in meaning was intended.' (*People v. Jones* (1988) 46 Cal.3d 585, 596, italics in *Jones*; [citation].)" (*McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 946.) The Legislature's use of two different terms, "replacement" and "renew," must be afforded significance. The "replacement" coverage referred to in subdivision (f)(3) means insurance obtained from a different insurer, while renewal of coverage referred to in subdivision (f)(6) means coverage obtained from the same insurer for a subsequent policy period.[5] In other words, renewal coverage cannot simply be a subset of replacement coverage, such that replacement coverage refers to any policy that replaces an expiring policy, whether issued by the old insurer or a new one. Interpreting "replacement" coverage as including renewal of coverage from the same insurer would render the two subdivisions incongruous and conflicting. As NORCAL points out, "[u]nder subdivision (f)(6) notice is only excused when renewal terms are timely offered,

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[4] Respondents do not argue that this exception applies here, obviously because they cannot demonstrate that an offer of renewal was made within the time period specified in subdivision (c).

[5] The conclusion that the 2000/2001 policy was a renewal of the 1999/2000 policy, not a replacement policy, is demonstrated by the fact that the two policies bear the same policy number.

but under subdivision (f)(3) notice would be excused even if renewal terms were offered for the first time the day before policy expiration."[6]

The purpose of the advance notice period required by nonrenewal statutes such as section 678.1 is to give to the named insured advance notice of the nonrenewal or conditional renewal of insurance "with enough time for renewal of that coverage or acquisition of other coverage." (*National Auto. & Casualty Ins. Co. v. California Casualty Ins. Co., supra*, 139 Cal.App.3d at p. 340 [§ 663]; see also §§ 674, 676.6, 11664.) Regardless of the time periods for provision of notice plainly set forth in section 678.1, respondents argue that once an insured obtains coverage, from the same insurer or a different insurer, extension of the first policy period is no longer required or available. According to respondents, acceptance of a successor policy essentially cures an insurer's failure to give notice of nonrenewal. Section 678.1 simply does not contain language to support that position.

Respondents rely, as did the trial court, on *American Casualty Co. v. Baker* (9th Cir. 1994) 22 F.3d 880 (*American Casualty*), which involved the application of California law and mentioned in dicta section 678.1 (which was enacted and became effective after the insurance policies at issue in the case were executed (*id.* at pp. 893-894 & fn. 13)). However, the *American Casualty* court was not interpreting section 678.1, subdivision (f)(3), but instead was called upon to determine the effect of language in the insurance policies themselves that required

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6 NORCAL also relies on selected portions of the legislative history of section 678.1. But when, as here, the plain language of the statute is clear and unambiguous, "no court need, or should, go beyond that pure expression of legislative intent." (*Green v. State of California* (2007) 42 Cal.4th 254, 260; *Brandon S. v. State of California ex rel. Foster Family Home etc. Ins. Fund* (2009) 174 Cal.App.4th 815, 827.) In any event, nothing in the legislative history directly addresses the intended meaning of "replacement" coverage as used in section 678.1, subdivision (f)(3).

the insurer to provide notice of nonrenewal to the insured, as well as a clause which gave the insured the right, in the event the insurer chose not to renew the policy, to purchase "discovery coverage" that provided the insured with additional time to report losses based on acts occurring prior to the policy's expiration. (*Id.* at p. 884.) In that context, the Court of Appeals held that because the insured had accepted a new policy with notice of its new terms, the new policy constituted a renewal of the previous policy, and therefore the insured could not elect to purchase discovery coverage under the previous policy, pursuant to the language of the discovery coverage clause. The court commented with regard to section 678.1, subdivision (f)*(6)* (regarding renewal coverage, not subdivision (f)(3) regarding replacement coverage), that "the statute illustrates that no public policy is served by requiring insurers to send formal notices of 'nonrenewal' along with offers to 'renew' a policy on different terms." (*Id.* at p. 894, fn. 13.)

Respondents contend that "[t]he analogy between *American Casualty* and the present case is clear. In both cases, the issue was whether coverage under an earlier policy remains available, despite the policyholder's willing acceptance of a successor policy. The Ninth Circuit's holding that coverage under the earlier policy was not available is compelling support for the trial court's conclusion that GMF's renewal of the 2000 Policy precluded the extension of the 1999 Policy." *American Casualty* is inapposite because it did not comment on the pertinent language of section 678.1, subdivision (f)(3) regarding replacement coverage. It discussed only subdivision (f)(6) regarding renewal of coverage, and merely stated that the public policy behind that statutory language did not require insurers to send both a notice of conditional nonrenewal, and an offer to renew a policy on different terms. (*Ibid.*)

The express language of subdivision (f)(3) militates against the conclusion reached by the trial court that where there is replacement coverage in place, there is no reason to extend the policy period by operation of law. Under the circumstances present here, application of section 678.1 extended the policy period until 60 days after notice of conditional renewal was provided to GMF, the named insured, because GMF did not agree in writing to obtain replacement coverage, that is, coverage from a different carrier. Its broker's written agreement to renew the policy on different terms did not invoke the exception stated in section 678.1, subdivision (f)(3).

B. *The Grant of Summary Adjudication Must Be Partially Reversed*

1. *The Cause of Action for Breach of Contract*

The 1999/2000 reinsurance contract provided: "This contract shall indemnify the reinsured [NORCAL] for all liability accruing to it in respect to the original policy issued by the reinsured." Because we have concluded that the 1999/2000 policy issued by NORCAL to GMF was extended by operation of section 678.1 through June 2001, we also conclude that NORCAL must be permitted to pursue its cause of action for breach of contract against respondents. GMF tendered the *GMC v. GMF* claim to NORCAL in February 2001, within the 1999/2000 policy period. NORCAL settled the lawsuit GMF filed against it based on NORCAL's denial of coverage for the *GMC v. GMF* claim. Pursuant to the coverage language of the reinsurance policy, NORCAL may therefore seek indemnity for all liability accruing to it in respect to the original policy issued by NORCAL to GMF. Accordingly, we reverse the trial court's granting of summary adjudication as to NORCAL's cause of action for breach of contract.

We note that respondents correctly point out that section 678.1 does not apply to reinsurance. To wit, section 675.5, subdivision (d)(8), provides that "the term commercial insurance does not include . . . reinsurance." Section 678.1 by its terms "applies only to policies of insurance of commercial insurance that are subject to Sections 675.5 and 676.6." (§ 678.1, subd. (a).) However, the inapplicability to reinsurers of the requirement to provide notice of nonrenewal or conditional renewal is irrelevant. At issue here is the fact that NORCAL was required by section 678.1 to provide notice of conditional nonrenewal to its insured, GMF. The lack of statutory duty on the part of the respondent reinsurers to provide notice of nonrenewal to their reinsured, NORCAL, is beside the point.

2. *The Cause of Action for Bad Faith*

The trial court, having concluded that NORCAL could not demonstrate a breach of contract on the part of the respondent reinsurers, granted summary adjudication as to NORCAL's related cause of action for breach of the implied covenant of good faith and fair dealing. "[B]ecause a contractual obligation is the underpinning of a bad faith claim, such a claim cannot be maintained unless policy benefits are due under the contract. (See, e.g., *Love v. Fire Ins. Exchange* [(1990)] 221 Cal.App.3d 1136, 1153.)" (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 35.) Here, NORCAL has properly stated a cause of action for breach of an obligation arising under the reinsurance contract, and therefore may also pursue its cause of action for bad faith. The grant of summary adjudication with regard to the bad faith cause of action must also be reversed.

3. *The Negligence Claim*

Finally, NORCAL also alleged in its complaint that respondent reinsurers were guilty of negligence because they breached *their* duty to provide notice of nonrenewal to the insured, GMF. We conclude that section 678.1 clearly places the duty to provide notice of nonrenewal on "the insurer," and not the reinsurers. Section 769.55, by its terms applicable to section 678.1, provides that "the obligation of an insurer to furnish any notice to its insured required by law may be carried out by an insurer's general agent, provided, however, that *an insurer's delegation of a notice obligation to a general agent shall not limit or negate the insurer's responsibility or liability* if the general agent fails to provide the required notice." (Italics added.) Thus, NORCAL's desire to cede the obligation to provide notice of nonrenewal to the respondent reinsurers simply because they were involved in the policy negotiations, is unavailing. The duty rested at all times with NORCAL as the insurer to provide such notice. As such, we conclude that the grant of summary adjudication as to NORCAL's cause of action for negligence must be affirmed.

C. *The Remaining Contentions Raised by NORCAL*

NORCAL further contends that the "follow the settlements" rule precludes respondents from raising any argument regarding lack of coverage of the 1999/2000 policy. It also contends that the respondents are equitably estopped from claiming, or have waived the right to argue, that section 678.1 did not extend the 1999/2000 policy. Because we conclude that the judgment in favor of the respondents must be reversed as to the breach of contract and bad faith claims, it is unnecessary to discuss these additional contentions.

DISPOSITION

The order granting summary adjudication of NORCAL's negligence cause of action is affirmed. The judgment is reversed as to the causes of action for breach of contract and bad faith denial of insurance coverage. The matter is remanded to the trial court for further proceedings. Costs on appeal are awarded to NORCAL.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

SUZUKAWA, J.

MALLANO, J.*

*Presiding Justice, Court of Appeal, Second Appellate District, Division One, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.