



The Next “Mass Tort”: Life Insurance Policy “Lapse” Litigation

Tiger Joyce

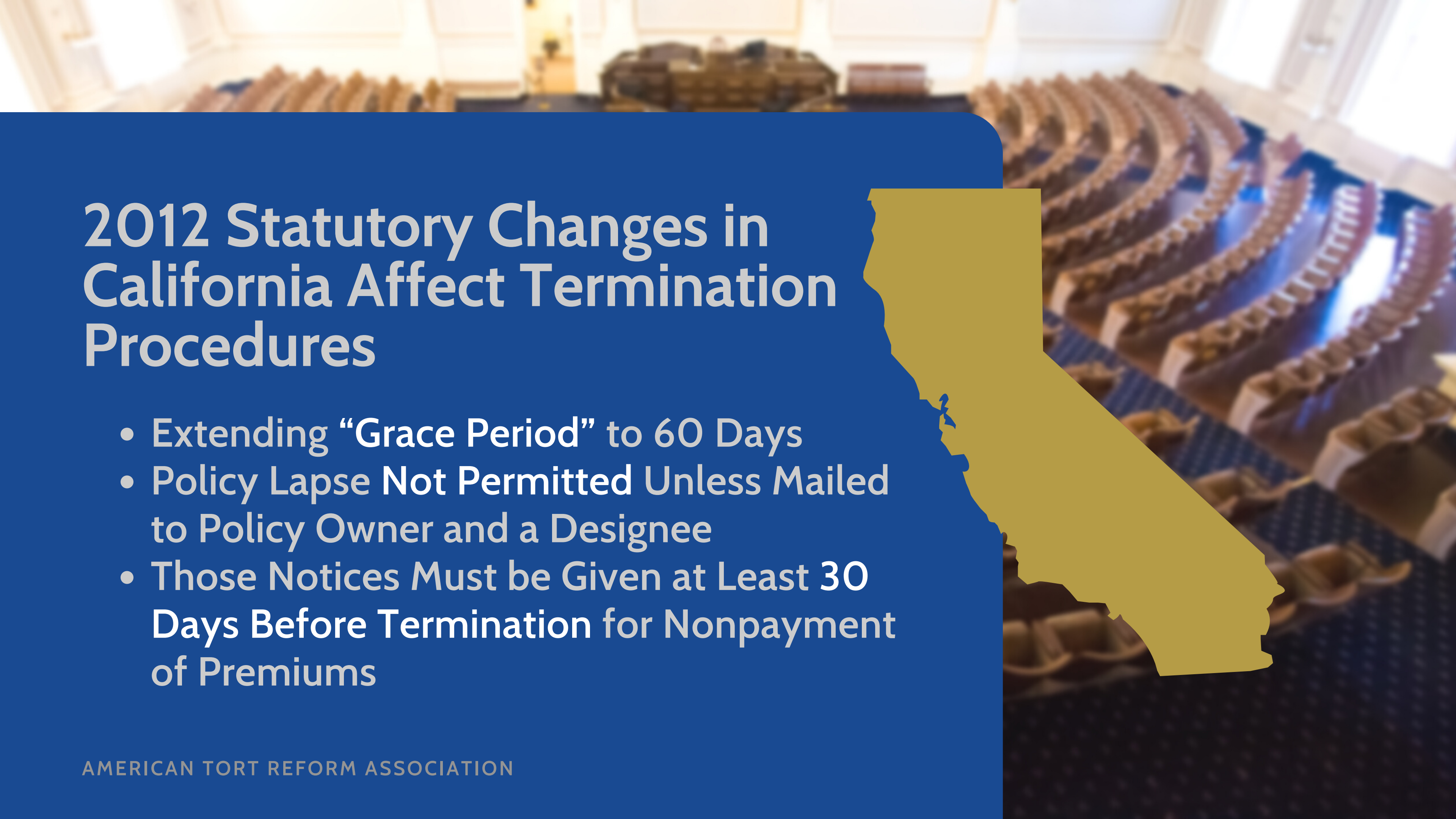
President, American Tort Reform Association

National Council of Insurance Legislators

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2012 Statutory Changes in California Affect Termination Procedures

- Extending “Grace Period” to 60 Days
- Policy Lapse Not Permitted Unless Mailed to Policy Owner and a Designee
- Those Notices Must be Given at Least 30 Days Before Termination for Nonpayment of Premiums



McHugh v. Protective Life (2021)

Litigation alleges that the company should pay off \$1 million policy initiated in 2005 despite nonpayment of premiums.

- Trial Court and Appellate Court Conclude that 2012 Statute Only Applies Prospectively
 - Insurance Commission Supports this View
 - Insurers Rely on the Insurance Commission
- CA SCT Holds that Requirements of 2012 Statute Apply Retroactively
- Additional Questions Arise Including “Strict Liability”
- Recent Appeals Court Decision Appears to Reject Strict Liability, But It Does Not Establish Legal Precedent



Thomas v. State Farm Life Insurance Company

U.S. District Court for the Southern District of California held that because the company did not fully comply with the terms of the 2012 statute, the two policies issued in 2008 and for which premiums were not paid in 2016 did not lapse.

This was upheld by the 9th Circuit.



**WHERE DO THE TWO
CASES LEAVE US?**

For incorrectly terminated insurance policies covering insureds who died after 2013 but before the insurer complied with the Statutes, *McHugh* and *Thomas* create another interesting question:

Can the insurer of such policies ever terminate them for failure to pay premium?



Assuming the insured is also the policy owner, the holdings would seem to imply that

no, these policies can never lapse for nonpayment

because the insurer can never provide the owner a 60-day grace period or provide him notice of pending lapse “30 days prior to the effective date of termination.”

(Rumberger Kirk)



AMERICAN TORT REFORM ASSOCIATION

THIS PLAYS
RIGHT INTO . . .

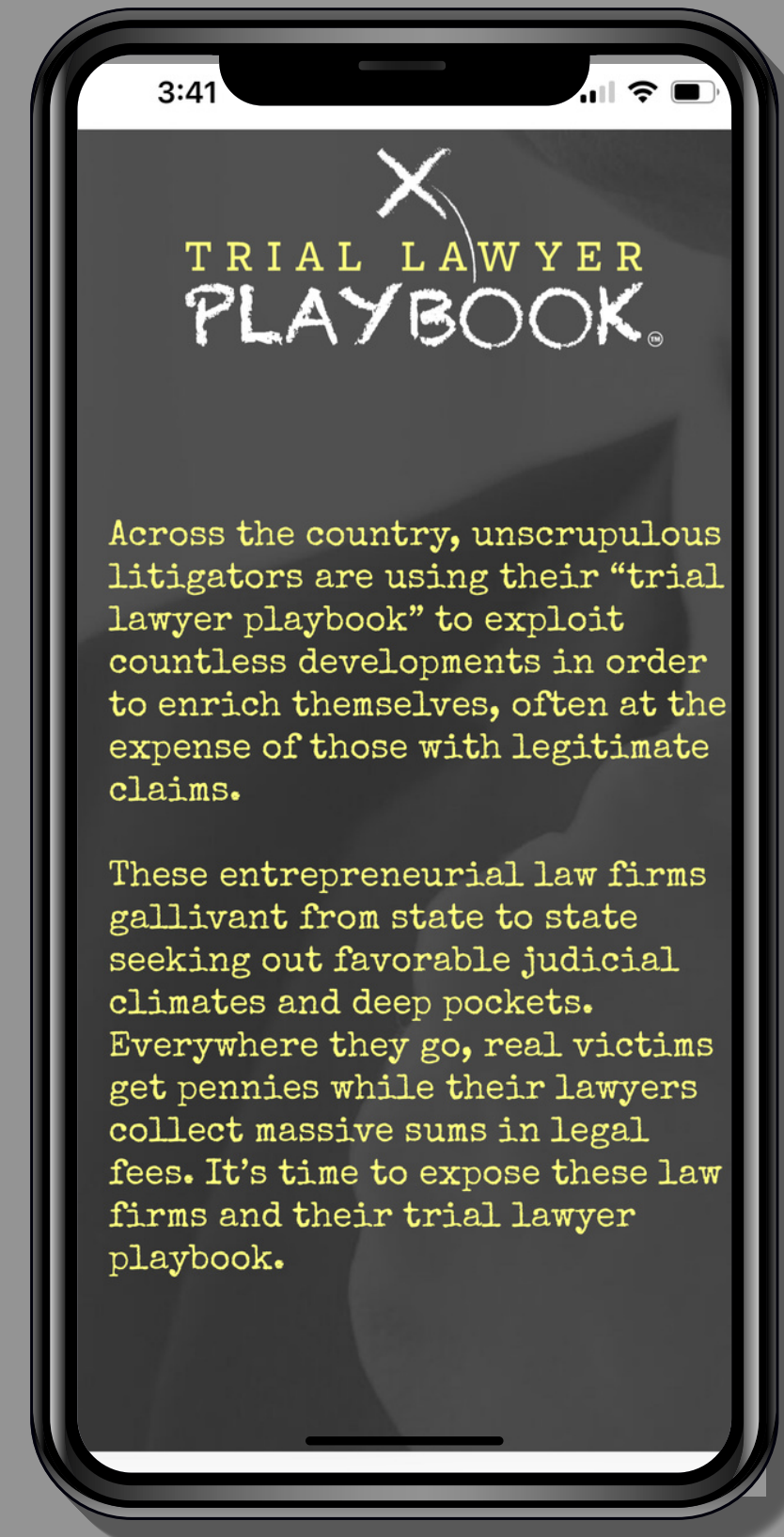
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KEY ELEMENTS

- 1. Litigation in the
#1 Judicial
Hellhole**
- 2. No proof of actual
injury required**
- 3. Retroactivity
disadvantages
defendants**

OVER 20 CLASS ACTIONS ALREADY FILED:



Advertising generates numbers

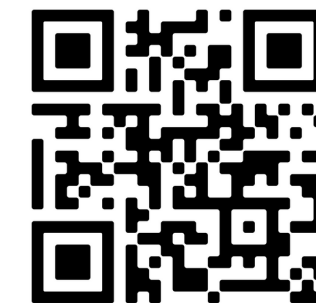


Litigation funders provide significant capital for class actions



Favorable venues yield favorable results

From 2017 to 2021
trial lawyers spent **\$594.4 MILLION**
on **5.3 MILLION** ads in California



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Conclusion



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