

# Class Claims Against Lincoln National Barred in Section 419 Action – Again

September 16, 2014

For the second time this year, a federal district court judge in North Carolina agreed with Lincoln National Life Insurance Company (Lincoln National) that putative class action claims were barred by the Securities Litigation and Uniform Standards Act (SLUSA), because the state law claims alleged untrue statements of a material fact regarding the purchase or sale of a covered security. In *Reittinger v. The Lincoln Nat'l Life Ins. Co.*, the plaintiffs alleged that the insurer misled employers and employees into adopting welfare benefit plans that purportedly complied with Section 419A(f) (6) of the Internal Revenue Code. They claimed Lincoln National knew that the plans it promoted did not offer the tax advantages described. Plaintiffs' individual and class claims were predicated on North Carolina statutory and common law. While there was never any suggestion that the plan was a "covered security," the parties agreed that life insurance policies purchased to fund the plan were variable life insurance policies. In March, upon consideration of Lincoln National's motion to dismiss the original complaint, the court agreed "that certain aspects of the plaintiffs' class claims are barred by SLUSA and [granted] the motion as to the putative class action claims." Notably, the court cited as support the U.S. Supreme Court's February 2014 decision in *Chadbourne & Parke LLP v. Troice*, which addressed the scope of SLUSA's phrase "misrepresentation or omission of a material fact in connection with a covered security," and concluded that **its scope extends no "further than misrepresentations that are material to the purchase or sale of a covered security."** *Reittinger* is the first variable insurance-related ruling to extend the scope. However, because the original complaint did "not clearly explain how [the 419 plan] worked and was funded, delineate between the decision to participate in the Plan and the decision to buy the covered securities, or set forth the specific misrepresentations which allegedly led to the decision to buy the variable life insurance policies," the court concluded that it "is possible that there are aspects of the plaintiffs' class claims which are not barred by SLUSA," and allowed the plaintiffs to file an amended complaint. The plaintiffs' subsequently-filed amended complaint suffered a similar fate when addressed in the

court's June ruling. This time, however, while the plaintiff's individual claims were still permitted to proceed, the class claims were dismissed with prejudice.

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