

2019 Year-End Class Action Roundup

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Life insurers bid farewell to a fairly moderate year of class action litigation. Although several class actions were filed against life insurers in the last quarter of 2019, the filings were reflective of the litigation trends within the past few years, including challenges to interest crediting under fixed indexed deferred annuities and cost of insurance expenses.

Fixed Indexed Deferred Annuities

On opposite sides of the country, two class action suits were filed within weeks of each other challenging fixed indexed deferred annuities. In the U.S. District Court for the **Central District of California**, the plaintiff challenged an alleged “fraudulent scheme” that consisted of the development and marketing of fixed indexed annuities that would provide above-market returns through uncapped participation in gains within certain proprietary indexes. The action sought certification of California and Illinois classes, and the complaint asserted violations of the California Unfair Competition Law and the Illinois Consumer Fraud and Deceptive Business Practices Act, and sought rescission and restitution for common law fraud. The action was short-lived as the plaintiffs filed a notice of voluntary dismissal just six weeks after filing the complaint.

In the second suit, filed in the **Southern District of Florida**, the plaintiff is seeking certification of a nationwide RICO class action and a Florida unjust enrichment subclass stemming from purported misrepresentations concerning the fixed indexed annuities’ participation in certain proprietary indexes.

Cost of Insurance

Plaintiffs also continue to file cases challenging the amounts charged for cost of insurance (COI). New class actions were filed in the **Middle District of Florida**, the **Western District of Missouri**, and the **Western District of Washington**. The Florida action asks the court to certify a class of Florida and Texas consumers who had monthly COI charges deducted from their policies allegedly in excess of amounts specifically permitted by the terms of the policies because the insurer failed to reduce

the COI rates to reflect the defendant's improving expectations as to future mortality experience. The action alleges common law claims for breach of contract, breach of the covenant of good faith and fair dealing, conversion, and declaratory relief.

Similarly, in Missouri, the plaintiff filed suit in state court to carve out a Missouri class from a pending nationwide (49-state) putative class action. The defendant insurer removed the action to the Western District of Missouri. Like the related action already pending in federal court, the new suit alleges that the defendant breached its duty to the plaintiff by failing to reduce COI rates to reflect the defendant's improving expectations as to future mortality experience.

In the Western District of Washington, the plaintiff seeks certification of a nationwide class (excepting policies issued in California and Missouri) and a Washington subclass in an action claiming that the defendant uses factors not authorized by the policies when determining the COI, which results in a higher COI. The plaintiff claims that this practice constitutes breach of contract, conversion, and violation of the Washington Consumer Protection Act, and seeks declaratory and injunctive relief.

Much of this type of class action litigation, particularly actions challenging index interest crediting under fixed indexed annuities and indexed universal life insurance policies, is certain to continue in 2020.

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