

Plaintiffs Survive Standing-Based Challenge to California Senior Notice and Financial Elder Abuse Claims

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In California, actions predicated on alleged senior notice requirement violations and financial elder abuse continue to challenge life insurers. For example, in June, a California federal district court denied the insurer's summary judgment motion in a putative class action where plaintiff alleged that inadequate disclosures of information regarding the policy's right to return and surrender and associated penalties on the face of her fixed indexed annuity, which violated California's senior notice statute, also violated the unlawful and unfair prongs of California's Unfair Competition Law (UCL), and the financial elder abuse provisions of the state's Welfare and Institutions Code. *Goertzen v. Great Am. Life Ins. Co.* Great American's motion was laser-focused on the question of plaintiff's standing, both under the UCL and Article III of the U.S. Constitution, to assert these claims. Plaintiff, who purchased the fixed indexed annuity at issue when she was 80-years-old, argued she had standing to pursue the claims in federal court because the surrender charges she was assessed when she took an early withdrawal from the annuity constituted an injury in fact, and the injury was traceable to the insurer's failure to make the requisite disclosures. Relying partly on the Ninth Circuit's May ruling in *Friedman v. AARP, Inc.* (see *Expect Focus*, Vol. II 2017), in which the court recognized that reliance need not be proved for violation of the UCL's unlawful prong where the predicate legal violation is not based on fraud or deception, the district court rejected Great American's contention that the plaintiff's inability to establish causation left her without standing. As to the claim under the unfair prong, the court recognized that, to the extent that claim relies on alleged deceptive conduct, an offer of evidence that she "'would not have bought the product but for the misrepresentation' ... is sufficient to establish both causation ... and injury." The court ruled that the plaintiff's deposition testimony that she would not have purchased the annuity had she known of the surrender charges and their duration was sufficient to create a triable issue on the question of causation and injury, preventing summary judgment. Notably, the court rejected Great American's argument that in order to be misled in the way alleged, in addition to the jacket and cover page, the

plaintiff would have also had to read the annuity contract sections regarding the surrender charges, and still fail to understand that there were surrender charges. As the court explained, "[t]he [senior notice statute's] protections would be rendered meaningless if a claimant could only show she was misled based on a reading of the entire policy, or evidence that some different disclosure would have sufficed."

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