LIFE INSURANCE INDUSTRY

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EXPECTFOCUS®

LEGAL ISSUES AND DEVELOPMENTS FROM CARLTON FIELDS JORDEN BURT, P.A.

TRANSFORMING THE INSURANCE INDUSTRY

THE DRIVE TO MODERNIZE, FROM TECHNOLOGY TO STANDARDS OF CARE

CARLTON FIELDS
JORDEN BURT

EXPECTFOCUS®
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EXPECTFOCUS® is a quarterly review of developments in the insurance and financial services industry, provided on a complimentary basis to clients and friends of Carlton Fields Jorden Burt, P.A.

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Executive Compensation Disclosure – Partial Relief for Insurance Products

BY ANN FURMAN

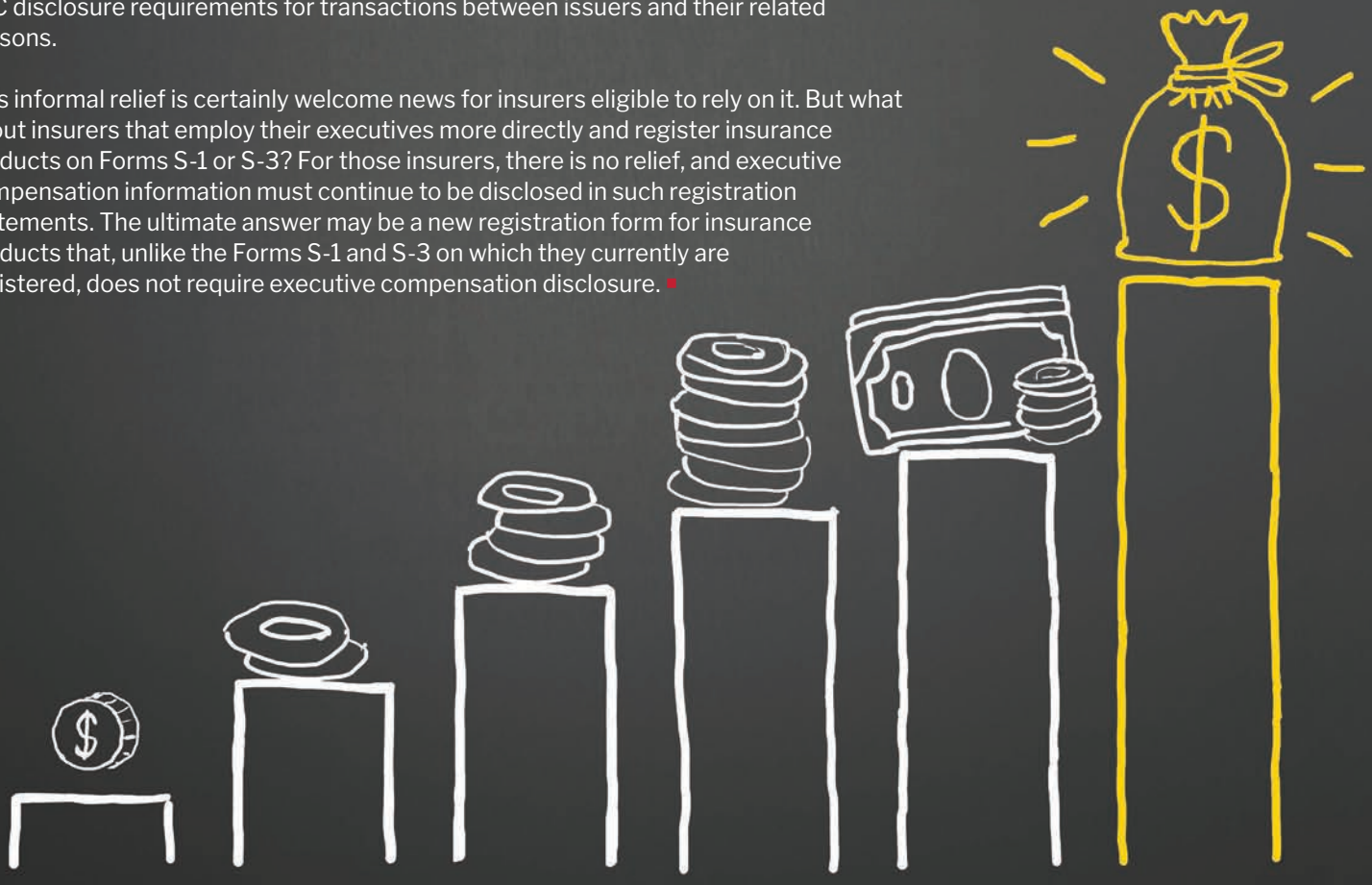
For many years, insurance company issuers of non-variable products that are registered with the SEC on Forms S-1 or S-3 have been required to disclose compensation information about highly-compensated executive officers of the issuer.

However, insurance companies issuing, or contemplating issuing such products – which include certain indexed-linked annuities and market value adjustment annuities – have long questioned the relevance to contract owners of executive compensation information. Among other things, requiring such information to be disclosed seems anomalous when the same information has not been deemed relevant or required to be disclosed in SEC registration statements filed for variable annuity contracts and variable life insurance policies.

Some insurance companies do not have employees of their own, but instead rely on a management or shared services agreement under which a parent or other affiliated company provides personnel to the insurer. Moreover, the affiliated company often determines and pays the compensation of the insurer's executives and the insurer often plays no part in setting such compensation.

For insurers operating under such a management or shared services agreement that register products on Forms S-1 or S-3, the SEC staff announced, from the podium at the November 2018 ALI-CLE Life Insurance Company Products Conference, informal relief from the executive compensation disclosure requirements. Instead of disclosing the specifics of executive compensation, those insurers would need to disclose only such information about the management or shared services agreement as is mandated by the applicable SEC disclosure requirements for transactions between issuers and their related persons.

This informal relief is certainly welcome news for insurers eligible to rely on it. But what about insurers that employ their executives more directly and register insurance products on Forms S-1 or S-3? For those insurers, there is no relief, and executive compensation information must continue to be disclosed in such registration statements. The ultimate answer may be a new registration form for insurance products that, unlike the Forms S-1 and S-3 on which they currently are registered, does not require executive compensation disclosure. ■



Buffer ETFs vs. Index-Linked Annuities

BY TOM LAUERMAN

A new form of "buffer" ETF is competing with somewhat similar products – often referred as index-linked or "buffer annuities" – issued by insurance companies. Innovator Capital Management, LLC serves as the investment adviser for a suite of buffer ETFs.

Like most ETFs, the buffer ETFs are registered with the SEC on Form N-1A as "open-end" investment companies, and they issue and redeem their shares at net asset value (NAV) only as part of large blocks, known as "creation units." Although the creation units can be purchased and redeemed only by a limited number of "authorized participants," other investors can purchase and sell shares of the buffer ETFs on the Cboe BZX exchange.

Buffer annuities, by contrast, are registered with the SEC on Form S-1 or S-3 and are not traded on any exchange.

General Purpose

Buffer ETFs and buffer annuities both offer investors the prospect of earning returns over specified periods of time (return periods), based on the performance of a specified securities index. For example, each buffer ETF that is currently being offered has a one-year return period that seeks to provide a return which closely approximates the return of the S&P 500 Index (without reinvestment of dividends), subject to (a) a specified maximum rate of return (i.e., a "cap") and (b) a "buffer" that seeks to provide a specified amount of protection against negative returns over the return period.

Similar to these buffer ETFs, the buffer annuities issued by insurance companies offer index-based returns over various return periods, subject to various specified caps, buffers and other terms.

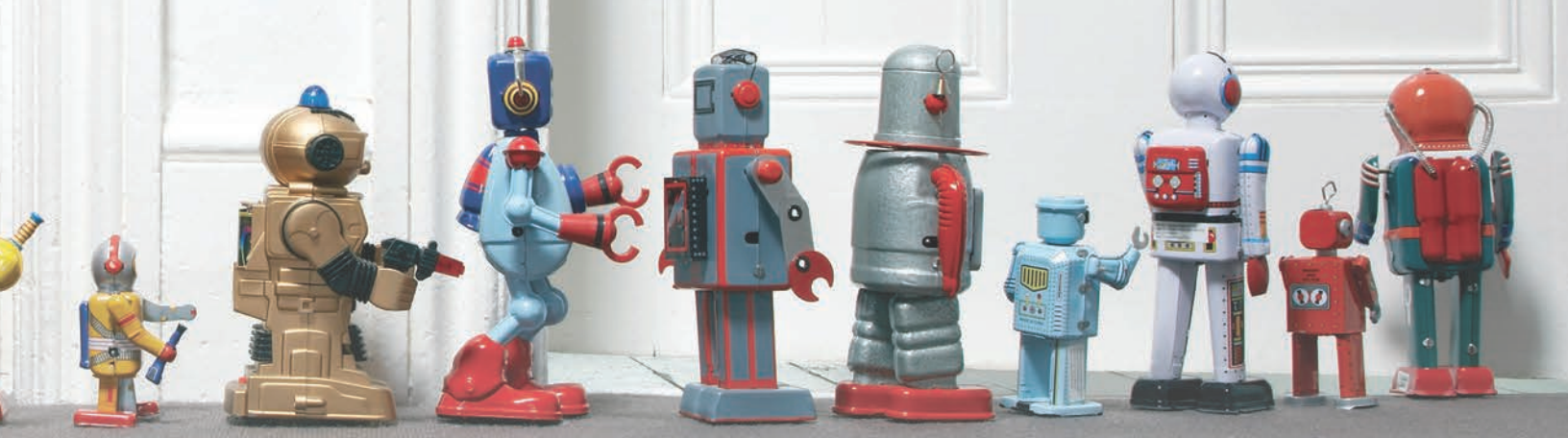
Under both the buffer ETFs and buffer annuities, the index and duration of each return period, as well as the amount of the applicable cap, buffer, and other terms, are established at the beginning of that period. At the end of a return period, the invested value (after crediting the return for that period) generally rolls over automatically into a new return period.

Supporting Investments

Like other ETFs, a buffer ETF's investment return over any return period is determined by the change in its NAV and any distributions paid on its shares during that period. The buffer ETFs invest most of their assets in various customizable put and call options on the S&P 500 Index that are traded on the Chicago Board Options Exchange (Flexible Options).

Specifically, a subadviser to the buffer ETFs seeks to structure and manage each ETF's portfolio of Flexible Options so that the ETF's total return over the return period will closely approximate the return of the index, subject to the specified cap and the buffer for that return period. Investors have no guarantee, however, that the buffer ETF will achieve the return that it seeks for any return period. Therefore, even if investors maintain their investment in a buffer ETF for an entire return period, their investment return and buffer protection may be less than that return period sought to provide.

In contrast, under a buffer annuity, the issuing insurance company promises that investors who maintain their investment for an entire return period will be credited with the index's performance over that period, subject to the cap, buffer, and other terms that are applicable to that return period. If the insurer's return on the assets it invests to support this promise is less than it has



promised to investors, the insurance company must bear the loss. Similarly, the insurer can keep any amounts that it earns in excess of the return promised to investors.

Other Differences

The buffer ETFs do not incorporate numerous features that are commonly available under buffer annuities, such as guaranteed lifetime income benefits, enhanced income benefits, and enhanced death benefits.

On the other hand, investors usually bear, directly or indirectly, more types of fees and charges under buffer annuities, as compared to buffer ETFs. This typically reflects the additional features and guarantees that characterize buffer annuities.

The products also have different tax consequences for investors. For instance, buffer annuities offer more opportunity for tax deferred build-up of investment gains. However, distributions under the buffer ETFs are potentially taxable at long-term capital gains or qualified dividend rates that are lower than the rates at which gains distributed from a buffer annuity would be taxed. Also, tax penalties that can apply to early withdrawals from a buffer annuity would not apply to withdrawals from a buffer ETF.

On the other hand, the following possibilities that could affect an investor's return or liquidity under a buffer ETF generally would not be relevant to investors in a buffer annuity:

- Any suboptimal decisions by the subadviser in managing a buffer ETF's portfolio of Flexible Options.
- Any illiquidity, unavailability, or difficulty in valuing any of the Flexible Options that the buffer ETF holds or that its subadviser would like to use.
- The risk of large flows of funds into or out of the buffer ETF during the course of a return period, which could complicate portfolio management in a way that adversely affects even investors who persist throughout the entire return period.
- Inadequate support from authorized participants, market makers, and other arbitragers, as such support is necessary to assure that the prices at which ETF shares trade on a securities exchange closely track the ETF's NAV.

Potential New Type of Variable Annuity Option

It may be possible for insurers to offer variable annuity contracts whose investment options include one or more underlying fund series that follow investment objectives and strategies that are comparable to those described above for the buffer ETFs. Such a product could be attractive to investors because it could offer them:

- The investment characteristics of a buffer ETF (except that neither the variable annuity nor any such underlying fund option would be an "ETF" or otherwise traded on an exchange), and
- Other features of a traditional buffer annuity, except for the type of investment guarantee that buffer annuities provide.

Such a combined product also could be attractive to some insurers for various reasons. Among other things, the product would be registered with the SEC on Form N-4, which some insurers may prefer to the registration forms required for traditional buffer annuities. ■

Parent Company Guarantees of Annuities

BY TOM LAUERMAN

Rule amendments proposed in October by the SEC could impact insurers whose obligations under certain types of annuity contracts have been guaranteed by the insurers' affiliates.

For example, parent companies of some insurers historically have guaranteed the insurers' obligations under fixed annuity contracts with "market value adjustment" features that require such obligations to be registered on SEC Forms S-1 or S-3. Among other things, such parent guarantees permit the parent company's consolidated financial statements and other financial information (rather than the insurer's) to be incorporated in such SEC registrations. This can result in cost savings where the parent is already a reporting company with the SEC and therefore already prepares financial statements and other financial information in the form that the SEC requires.

In order to achieve such advantages, however, Rule 3-10 of the SEC's Regulation S-X requires that the footnotes to the parent company's consolidated financial statements set forth specified information about the parent's subsidiaries. The SEC's proposed rule amendments would revise what information about the subsidiaries is required, as well as where and for how long that information must be set forth.

Although these changes will generally make it easier to comply with the rule, any affected insurers and their parent guarantors will need to revise their practices once the amendments are finalized. ■

SEC Lightens Legal Load of Mutual Fund Directors

BY GARY COHEN

The SEC staff now says that mutual fund directors can rely on chief compliance officer certifications in determining compliance with board procedures required by SEC exemptive Rules 10f-3, 17a-7, and 17e-1 under the Investment Company Act.

This no-action position supersedes a 2010 staff letter requiring directors themselves to determine that board procedures had been met to qualify for exemption from bans on fund acquisition of securities during an affiliate's underwriting; purchase or sale transactions between a fund and certain affiliates; and a fund affiliate's receipt of compensation for a purchase or sale of securities with a fund.

The staff's new position gave increased weight to the SEC's 2003 adoption of Rule 38a-1 "to enhance the effectiveness of a fund's compliance program by, among other things, assigning the responsibility for the administration of the program to the CCO." The staff explained that, in adopting the rule, the Commission "expressed a view that the proper role of the board with respect to compliance matters is to oversee the fund's compliance program without becoming involved in the day-to-day administration of the program."

Dalia Blass, director of the SEC's Division of Investment Management, said that the 2010 staff position "require[d] compliance reviews that are duplicative of work that fund CCOs are already doing" and "rather than adding a helpful additional layer of oversight, this duplication is competing for board time with more efficient lines of inquiry."

Director Blass noted that the change in staff position resulted from her division's ongoing "Board Outreach Initiative," where the staff has "an opportunity to meet and engage in an informative dialogue with a number of fund boards and independent directors." ■

Is It Time to Revisit SEC's Ban on "Forced" Arbitration Provisions?

BY EDMUND ZAHAREWICZ

The SEC has long refused to allow companies to go public with bylaws or other governing documents that would require shareholders to arbitrate federal securities law claims against the company. But there also has been considerable doubt over the SEC's position, at least since the late 1980s when the Supreme Court upheld the enforceability of similar provisions in broker-dealer customer agreements.

Nevertheless, the SEC has rarely had to defend its position. It was challenged, albeit somewhat tepidly, in 2012 when a major private equity firm attempted an initial public offering (IPO) with mandatory arbitration provisions. The firm quickly resolved to remove the offending provisions from its governing documents after facing opposition from the SEC staff as well as certain advocacy groups and lawmakers.

The SEC itself, however, has not been without its own skeptics. Last year, for example, then-SEC Commissioner and Acting Chairman Michael Piwowar was reported to have invited public companies to approach the SEC on the subject. Then, in January 2018, it was reported that the SEC was laying the groundwork for possibly reconsidering its position in order to help incentivize more IPOs and thus reverse a downward trend in the number of U.S. IPOs.

This raised the ire of certain lawmakers who wrote SEC Chairman Jay Clayton in March, admonishing him to reaffirm the agency's long-held position. But the Chairman demurred in an April letter back to lawmakers in which he noted the complexity and importance of the issue. He also highlighted differing agency practices where, outside the IPO context, the SEC has not objected, for example, to the use of mandatory arbitration provisions in governing documents by foreign issuers that have listed stock on U.S. exchanges or by companies conducting exempt Regulation A offerings. He did affirm to the lawmakers, however, that the issue was not a priority for him personally and that he expected any decision on the issue would involve the full Commission (rather than the SEC staff acting pursuant to delegated authority) and would be made "in a measured and deliberative manner."

In addition, SEC Commissioner Hester Peirce has expressed skepticism of the SEC's historic position. To her, the issue is largely whether the SEC is justified in substituting its judgment for that of duly-informed investors. In recent public remarks, for instance, she emphasized the anomaly of the SEC's opposing mandatory arbitration provisions when used in the IPO context, but not when used by foreign companies that list their securities on U.S. exchanges. The propriety of mandatory arbitration provisions is, according to Peirce, the kind of issue that has generally been the province of state corporate law. She also questioned why the result should be different in the securities law context, as compared with other regulatory contexts in which the Supreme Court has upheld arbitration agreements – as it did most recently last May in *EPIC Systems Corp. v. Lewis*. In that case, the court held that the National Labor Relations Act (NLRA) does not prohibit mandatory arbitration provisions in employment agreements. Notwithstanding a contrary interpretation of the act by the National Labor Relations Board, the court found no "conflicting command" under the NLRA to the general directive under the Federal Arbitration Act that courts enforce arbitration agreements according to their terms. As there are no federal securities statutes expressly conflicting with this directive, the SEC, if challenged, may ultimately be hard pressed to defend its ban on mandatory arbitration provisions in governing documents.

The issue is not without relevance to variable insurance product offerings, as product issuers are subject to much of the same securities regulation as issuers in traditional IPOs. Given the considerable and arguably growing controversy over the SEC's position, now would be a good time for the SEC to revisit the issue forthrightly. ■

Various NAIC Groups Discuss a Cornucopia of Life and Annuity Topics

BY ANN BLACK AND JAMIE BIGAYER

At the NAIC Fall 2018 National Meeting, various groups within the NAIC discussed a cornucopia of topics that impact the life and annuity industry. The overflowing topics varied, ranging from data usage to the standard of care. Not only were the abundant topics discussed by the Life Insurance and Annuities (A) Committee ((A) Committee) and its various working groups, but also by the Innovation and Technology (EX) Task Force (Innovation TF) and its Big Data (EX) Working Group (Big Data WG).

(A) Committee and Its Working Groups

The (A) Committee and its four working groups have been busily addressing a bounty of topics, including:

- **Annuity Disclosure (A) Working Group (Annuity Disclosure WG)** – whether the Annuity Disclosure Model Regulation (#245) (Annuity Disclosure Model) should be revised to allow illustrations of index accounts that credit interest based on the change in an index that has not been in existence for 10 years. The Annuity Disclosure WG had not been able to reach a consensus on proposed changes to the Annuity Disclosure Model, and without further extension of its charge, work on revisions to the illustration provisions of the Annuity Disclosure Model would cease. The Annuity Disclosure WG sought an extension of its charge and sought to form a small drafting group that would develop draft language for review and discussion by the Annuity Disclosure WG.

  During its November 16 meeting, the (A) Committee agreed to an extension of the Annuity Disclosure WG's charge.

- **Annuity Suitability (A) Working Group (Suitability WG)** – development of revisions to the Suitability in Annuity Transactions Model Regulation (#275) (Suitability Model). The Suitability WG was the only (A) Committee WG to meet at the NAIC Fall 2018 National Meeting. At its meeting, the Suitability WG agreed to a number of revisions to the Suitability Model, which remains a work in progress.

  At the (A) Committee November 16 meeting, the Suitability WG sought to hand over, and the (A) Committee agreed to take, the Suitability Model. The (A) Committee agreed to expose the Suitability Model and to receive comments until February 15, 2019. The (A) Committee recognized that the Suitability Model has not been finalized by the Suitability WG, but felt it was important to gain plentiful comments from those who had not been part of the Suitability WG. This would also allow the NAIC to use the exposed draft in potential discussions with the SEC and the DOL.

- **Life Insurance Illustration Issues (A) Working Group (Life Illustrations WG)** – increasing consumer understanding of the life insurance narrative summaries required by Section 7B of the Life Insurance Illustrations Model Regulation (#582) and the policy summaries required by Section 5A(2) of Model #580. As part of this work, the Life Illustrations WG has been discussing the use of a policy overview document that would accompany all life insurance policies along with the Buyer's Guide.

- **Life Online Guide (A) Working Group** – development of an online resource for consumers to evaluate life insurance. Under discussion is whether the online tool would include tools to help consumers decide what type of life insurance to buy and how much.

In addition, at its November 16 meeting, the (A) Committee discussed whether Actuarial Guideline 49 (AG 49) should be revisited in light of recent developments in index universal life insurance products. Mike Yanacheak, actuarial administrator from Iowa, noted that the abundant use of multipliers in determining the index interest credited are a "relatively recent innovation in index UL." Multipliers were not prevalent at the time AG 49 was created. Mr. Yanacheak noted AG 49 sets forth:

- A maximum for Index UL illustrated rates

- Limits on loan illustrations

Michael Boerner from Texas and chair of Life Actuarial (A) Task Force (LATF), confirmed that revisiting AG 49 is within the scope of LATF's current charges, and noted that the IUL Illustration (A) Subgroup is prepared to do the work. Consumer representative Birny Birnbaum expressed support for LATF's inquiry into AG 49 and told the (A) Committee that "companies are developing products to game AG 49 and illustrate unreasonable returns to obliterate the risk return relationship consumers are facing in the market." James Regalbuto, deputy superintendent for life insurance at the New York Department of Financial Services, also expressed support for this work and noted it is a "matter that requires urgency" because "products are being grossly over illustrated." The (A) Committee agreed to add this charge to LATF.

Innovation TF and Big Data WG

The Innovation TF and Big Data WG have been addressing a feast of different innovations being implemented by life insurers and different regulations that have an impact on life insurers' ability to innovate.

Innovation TF

Jon Godfread, North Dakota Insurance Commissioner and vice chair of the Innovation TF, reported on a review of state law regarding anti-rebating laws, cancellations, renewals, and e-signatures. He noted that while the laws are generally consistent, interpretations vary by state. In particular, Mr. Godfread suggested that as innovation continues, more gray areas will arise, particularly with respect to anti-rebating. Regulators discussed whether items provided to consumers that help reduce risk should really be viewed as an inducement that is not permitted under the anti-rebating laws. Regulators noted that wearables may help keep consumers healthier and reduce risk. Mr. Godfread noted the difficulty is the need to prove whether the item given to the consumer actually mitigates risk. He noted that this a roadblock to innovation.

The Innovation TF continued to hear from innovators and has also been seeking contacts at the various states who can be contacted by those with questions on innovation. The contacts will be listed as part of the NAIC's new "InsurTech, Innovation & Technology" website located at https://www.naic.org/index_innovation_technology.htm. The website also will contain materials on artificial intelligence, autonomous vehicles, big data, blockchain, cybersecurity and the internet of things.

Big Data WG

The Big Data WG continued its discussion on the use of big data in life insurance underwriting and raised a cornucopia of questions:

- Do regulators have the tools to evaluate the legality and appropriateness of the use of data in life underwriting and to evaluate the models being used?

- Have the models being used and the data used in the models been appropriately validated? In other words, are the models really predictive?

- Should vendors who provide data be subject to regulation?

- Should vendors who are developing the models be subject to regulation?

- Are the models developed by vendors the same for the different insurers using the vendors' models?

Doug Ommen, Commissioner of Iowa and the chair of the Big Data WG, noted that the Big Data WG needed to continue to understand what is happening and develop best practices. ■

Use of Non-Binding SEC Staff Guidance Called Into Question

BY THADDEUS EWALD

Recent moves by the SEC could signal a shift away from the use of non-binding guidance in the form of no-action letters or other types of compliance and interpretive information that the SEC staff frequently publishes. In September 2018, the SEC's Division of Investment Management issued an Information Update withdrawing two no-action letters relating to investment advisers' use of proxy advisory firms to help the advisers discharge their responsibility to vote proxies for client securities. The letters, issued in 2004 to Egan-Jones Proxy Services and Institutional Shareholder Services, Inc., assisted investment advisers in demonstrating they were acting in the best interest of their clients when voting proxies in a manner recommended by independent, third-party proxy advisory firms.

The Information Update premised the withdrawal on the SEC staff's desire to "facilitate the discussion" at a scheduled November 2018 "Roundtable on the Proxy Process." However, any such discussion could occur just as easily if the letters had not been withdrawn. The withdrawal appears to reflect some change in the staff's thinking on proxy advisory firms in light of developments during the 14 years since the letters were issued.

The Information Update emphasized that "[s]taff guidance is nonbinding and does not create enforceable legal rights or obligations." However, that point is generally well understood. This language would not have attracted attention if SEC Chairman Jay Clayton had not released a statement that same day on "SEC Staff Views," underscoring the non-binding nature of informal guidance and statements issued by the SEC staff.

Chairman Clayton listed a variety of communications in which SEC staff voice their views on relevant statutes and rules, "including written statements, compliance guides, letters, speeches, responses to frequently asked questions and responses to specific requests for assistance." In particular, he directed the agency divisions to "review whether prior staff statements and staff documents should be modified, rescinded or supplemented in light of market or other developments."

In the past, the SEC staff has not attempted such sweeping reconsiderations of its outstanding informal guidance, and it has withdrawn only a very small proportion of the many no-action letters that were issued. However, the above developments suggest that the SEC staff may, in the future, change or withdraw such non-binding guidance more frequently, which would make it prudent for companies to give less weight to such guidance.

In addition, any winnowing of the SEC staff's outstanding guidance may reduce the overall amount of guidance available. It remains to be seen whether the staff will cut back on the amount of informal guidance it issues in the future. ■

New Jersey Fiduciary Rule Pre-Proposal

BY STEPHEN CHOI

On October 15, the New Jersey Bureau of Securities (Bureau) requested public comments on the concept of amending the New Jersey Blue Sky regulations "to require that broker-dealers, agents, investment advisers, and adviser representatives be subject to a fiduciary duty."

The proposal is intended to impose a fiduciary duty uniformly across different categories of financial professionals to ensure that investors receive unbiased advice from all of them.

Under the current regulatory regime, investment advisers, and their representatives owe customers a fiduciary duty. Broker-dealers and their representatives, however, are subject to a suitability standard, which could allow them to place their interests before the customer's if they have a reasonable basis to believe that their recommendations are suitable for the customer.

Thus, the New Jersey Bureau joins other efforts in many jurisdictions to address these issues with revisions in state securities laws or regulations. *See* State Suitability, Fiduciary Duty and Disclosure Initiatives Roundup, *Expect Focus*, Vol. I, Mar. 2018. These initiatives follow in the wake of major and continuing efforts by the DOL, SEC, and others to address such issues.

The Bureau has yet to specify details as to the definition of the required standard of conduct or who would be subject to it. Among other considerations, coverage of any such proposal may be limited by the National Securities Markets Improvement Act of 1996 (NSMIA). Section 203A(b) of the federal Investment Advisers Act preempts "all regulatory requirements imposed by state law on SEC-registered advisers relating to their advisory activities or services, except those provisions that are specifically preserved by [NSMIA]," and a similar provision with regard to federally-registered FINRA member broker-dealers preempts state regulations relating to, among other things, making and keeping records.

The comment period is now closed and the comments received by the Bureau, including at two roundtables in November, reflected an exceedingly wide variety of opinions. ■

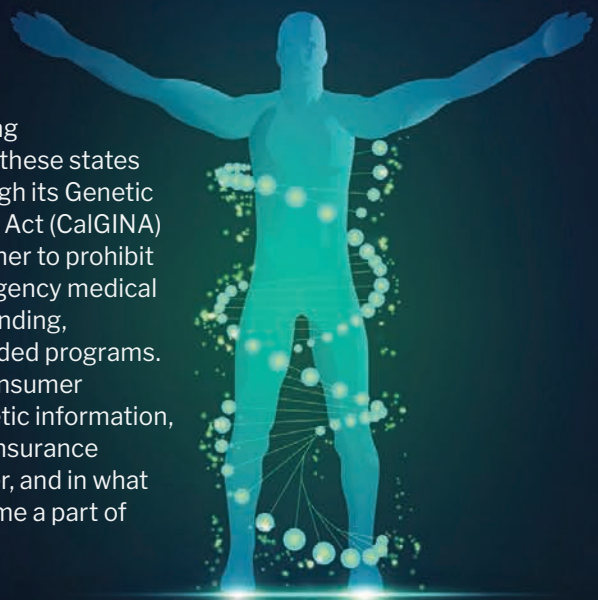
How State and Federal Laws Are Addressing the Use of Direct-to-Consumer Genetic Testing by Insurance Companies

BY GAIL JANKOWSKI

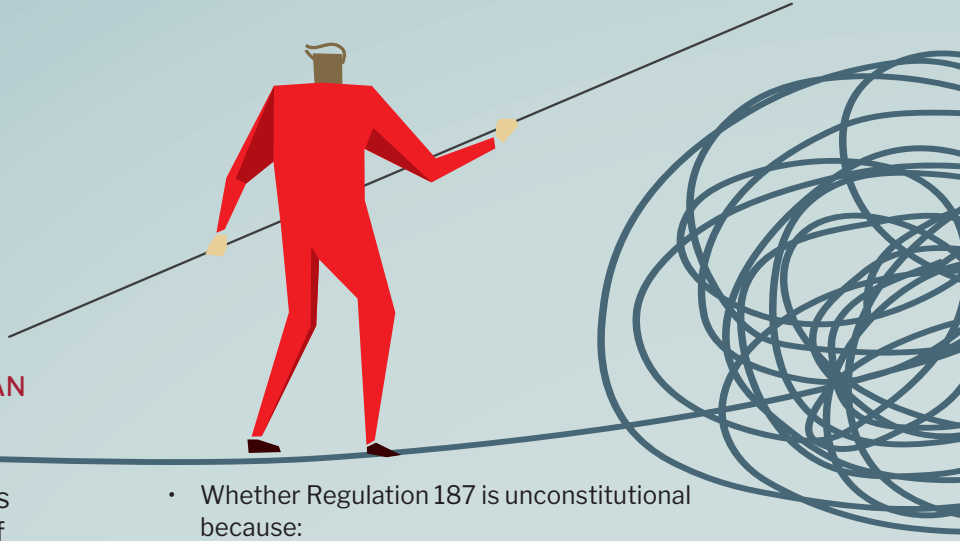
While life insurers traditionally have set premiums based on a multitude of complex actuarial tables, the recent boom in direct-to-consumer DNA testing produces, such as 23andMe and AncestryDNA, is expanding the universe of genetic information available about consumers for consideration in rate-setting and other underwriting and policy operations.

Many of the genetic testing products on the market provide not only information about consumers' ancestry, but also about predispositions to diseases by revealing genetic variants associated with an increased risk of developing certain health conditions, such as Parkinson's. Insurance industry experts fear that the increased adoption and use of genetic testing may pose a threat to the industry should customers buy policies knowing, but not disclosing, genetic predispositions to certain disorders. On the other hand, many consumers fear that such information may be used to discriminate against them in the underwriting process.

Federal and state legislatures are taking active steps to regulate the use of genetic information by insurers. For example, the Federal Genetic Information Nondiscrimination Act of 2008 (GINA) makes it illegal for health insurers to request, require, or use consumers' genetic information to make decisions about eligibility for health insurance or the health insurance premium, contribution amounts, or coverage terms. Notably, these protections do not apply to long-term care policies, life insurance, or disability insurance; however, some states have adopted similar laws that address life insurers.



As of June 2018, 17 states have laws restricting life insurers from using genetic information in their underwriting process. In addition, several of these states – for example, California, through its Genetic Information Nondiscrimination Act (CalGINA) – extend protections even further to prohibit genetic discrimination in emergency medical services, housing, mortgage lending, education, and other state-funded programs. As states continue to adopt consumer protection laws related to genetic information, it remains to be seen how the insurance industry will adapt, and whether, and in what form, genetic testing will become a part of their risk assessments. ■



Challenging New York's "Best Interest" Standard: A Comparison to *COCUS*

BY JAMES F. JORDEN AND BRIAN PERRYMAN

Recent challenges filed by trade associations representing insurance agents in the state of New York seek to overturn the amendment of Regulation 187, which will impose a "best interest" standard on life insurance agents in the offering and sale of annuities and life insurance in New York. The standard would create an effective "fiduciary" relationship between insurance agents and their prospective and actual customers.

Two lawsuits, *In re Independent Insurance Agents & Brokers of New York, Inc.* and *In re National Association of Insurance and Financial Advisors – New York State, Inc.*, raise a number of issues challenging the legality of the Regulation under New York law, including the state's constitution and common law. The New York Department of Financial Services (DFS) has yet to file its responsive argument. Below is a summary of the arguments and a general comparison to arguments raised in the litigation that took place over the past several years involving the United States Department of Labor's adoption of a new definition of "fiduciary" under ERISA (the "DOL rule"). In *Chamber of Commerce of the United States of America v. Department of Labor* (*COCUS*), that litigation culminated in a decision by the the Fifth Circuit invaliding the DOL rule.

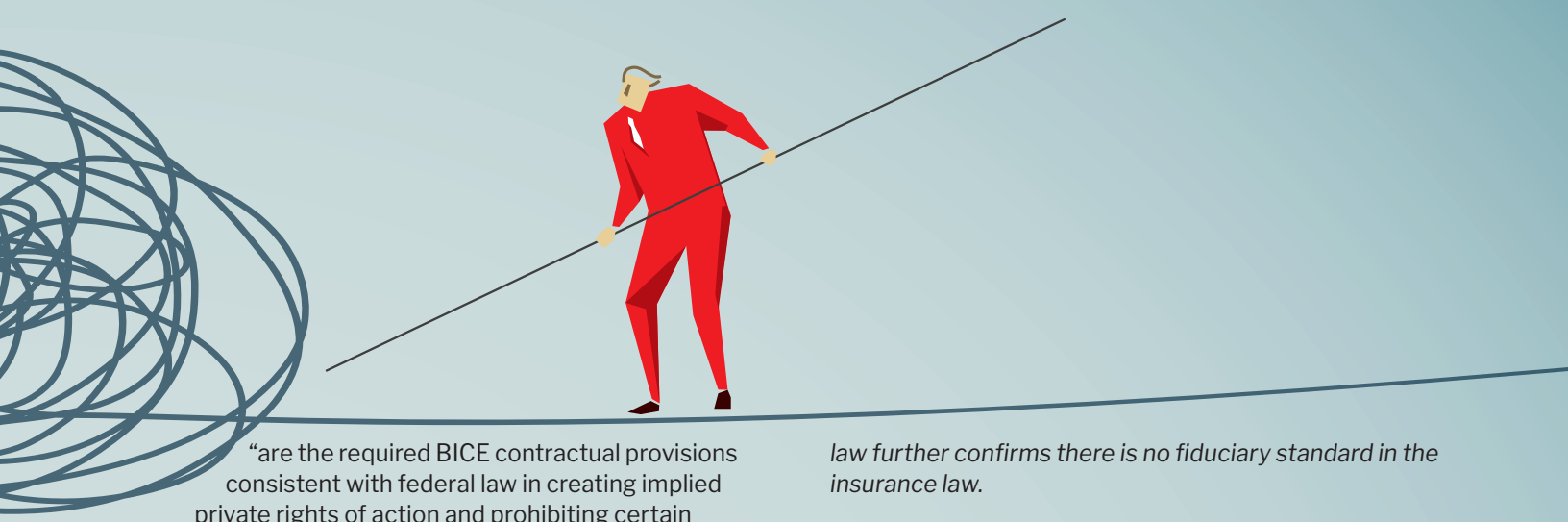
OVERVIEW

In general, the New York lawsuits ask the state courts to address:

- Whether DFS acted *ultra vires* in promulgating Regulation 187 because:
  - Regulation 187 places obligations on agents that contradict New York Insurance Law Sections 2103 and 2101(a).
  - The statutes DFS cites do not grant it the power to promulgate Regulation 187, which is a disguised fiduciary standard.
  - *Boreali v. Axelrod* confirms that DFS lacks statutory authority to promulgate Regulations 187.
- Whether Regulation 187 is unconstitutional because:
  - The Legislature would have violated the separation-of-powers doctrine by delegating statutory authority to DFS.
  - Regulation 187 contains impermissibly vague and confusing terms, like "best interest" and "recommendation."
  - Regulation 187 violates due process by purporting to apply retroactively.
- Whether Regulation 187 is invalid because it purports to create a continuing duty to consumers even after the policy is issued, in contravention of longstanding common law principles.
- Whether Regulation 187 is arbitrary and capricious because:
  - DFS did not supply an estimate of costs, including the cost to small businesses.
  - DFS did not explain why the regulation exceeds federal standards.
  - DFS was arbitrary and capricious in exempting direct-marketing transactions while imposing a fiduciary standard on all others.
  - DFS was arbitrary and capricious in conflating brokers and agents.

Seeking to invalidate the comparable DOL rule, the challengers in *COCUS* raised a series of legal issues addressed by the federal appellate court:

- Does the new definition of an investment advice fiduciary comport with ERISA Titles I and II?
- Is the new definition "reasonable" under *Chevron, U.S.A., Inc. v. N.R.D.C., Inc.*, and not violative of the Administrative Procedures Act (APA)?
- Does the BICE exemption, including its impact on fixed indexed annuities, assert affirmative regulatory power inconsistent with the bifurcated structure of Titles I and II and is invalid under the APA? Further,



"are the required BICE contractual provisions consistent with federal law in creating implied private rights of action and prohibiting certain waivers of arbitration rights?"

DISCUSSION

The *COCUS* opinion is comparable to the New York lawsuits at least on a superficial level:

- Both involve legal actions by the industry to invalidate a regulation imposing a fiduciary duty – or its functional equivalent – on customer-facing financial service representatives.
- Both involve legal theories that the regulator acted *ultra vires* in the statutory scheme, acted arbitrarily and capriciously, and violated the relevant constitutional provisions.
- In addition, a close reading of the "analysis" in *COCUS* with the arguments made in the New York cases (particularly the "Big I" and PIANY pleadings), illustrates the potential similarity in the emphasis placed on several issues, including the common law arguments and the standards of reasonableness.

Furthermore, compare the following language from the *COCUS* analysis:

> *The common law understanding of fiduciary status is not only the proper starting point in this analysis, but is as specific as it is venerable. Fiduciary status turns on the existence of a relationship of trust and confidence.*

with the following from the New York pleadings:

> *At common law an insurance broker is not a fiduciary and owes no fiduciary duty. In contrast, an agent owes a higher duty to its principal. Longstanding New York case law further confirms there is no fiduciary standard in the insurance law.*

Similarly comparable is the analysis in *COCUS* regarding the applicability of these similar common law standards in evaluating whether an agency's actions are unreasonable. Compare the following language from *COCUS*:

> *The Supreme Court has warned that 'there may be a question about whether [an agency's] departure from the common law … with respect to particular questions and in a particular statutory context renders its interpretation unreasonable."*

with the following from the New York pleadings:

> *An administrative regulation will only be upheld as valid if it has a rational basis, that is, if it is not unreasonable, arbitrary or capricious.*

There are other aspects of the New York pleadings that reflect a common set of themes regarding a regulatory agency's action in attempting to "create" a legal "fiduciary" duty where, under the law and virtually legal precedent currently in existence, none exists.

That said, in reality, *COCUS* is only similarly comparable to the New York lawsuits in that both involve legal actions to invalidate a regulation attempting to impose a fiduciary duty and both involve arguments with common themes. On another level of analysis, the cases are not meaningfully comparable.

- The statutory schemes at issue – ERISA and the New York insurance code – involve fundamentally different issues, legislative arrangements, and case law milieu.
- The specific constitutional theories are not at all comparable, e.g., there is no First Amendment challenge in the New York lawsuits. ■

SEC Proposes Summary Prospectus Option and Modernized Disclosure for Variable Insurance Products

BY CHIP LUNDE

On October 30, the SEC voted to propose modernized disclosures for variable annuities and variable life insurance policies.

The proposal would permit:

- the use of an initial summary prospectus (ISP) for variable insurance products currently offered to new investors,
- the use of an updating summary prospectus (USP) for existing investors, and
- online delivery (aka, access equals delivery) of underlying fund prospectuses and other documents.

Initial and Updating Summary Prospectuses

The ISP would include specified key disclosures including, among other things:

- a cover page including required legends,
- a contract overview,
- a "key information" table providing a brief description of fees, risks, restrictions, taxes and conflicts of interest,
- a summary description of benefits,
- information about how to purchase and surrender the contract,
- the possibility of contract lapse (for variable life policies),
- a full fee table, and
- an appendix providing summary information about the available underlying funds.

The USP would highlight three key disclosures including, among other things:

- a concise description of any contract-related changes that occurred within the prior year affecting the fee table, the death benefit and other benefits, and the availability of the underlying funds,
- the key information table, and
- an appendix providing summary information about the available underlying funds.

Access Equals Delivery for Underlying Fund Prospectuses

The proposal also would permit online delivery of underlying fund prospectuses, including underlying fund prospectus amendments. The access equals delivery approach would be conditioned on the following:

- an ISP is used for each currently offered contract,
- a summary prospectus is used for the underlying fund, and
- the underlying fund's current summary prospectus, statutory prospectus, statement of additional information, and most recent shareholder reports are posted online and made available in accordance with specified conditions.

Issues for Special Consideration

The summary prospectus proposal provides a long-awaited option for reducing the length of variable contract prospectuses that must be delivered to customers, and may reduce printing and mailing costs for many market participants.

However, the proposal may impose additional costs and compliance burdens for issuers that should not be underestimated. Some items to note for special consideration or possible comment include the following:

- Issuers choosing to use the proposed summary prospectus regime would be required to create and manage two new types of disclosure documents (the ISP and USP) for each contract, in addition to the full statutory prospectus.
- Each ISP could only describe a single contract, which may frustrate issuers that currently market multiple contracts in a single prospectus.
- Each ISP and USP appendix could only include funds currently offered under the contract, which creates an information disparity for investors in closed funds.
- Each ISP and USP appendix would be required to include performance information for each currently offered underlying fund, which may complicate administration and coordination with fund partners and may increase potential liability for insurers.
- The USP would only be allowed to describe changes that occurred since the most recent update.
- The ISP and USP options would not be available for contracts registered on forms S-1 or S-3.
- The access equals delivery conditions for underlying fund prospectuses could require enhanced coordination among insurers and fund partners to ensure required fund documents are posted online and made available to customers.
- Reliance on the "Great-West" line of no-action letters (for not updating registration statements covering certain discontinued contracts) would be available only for contracts Great-Wested before the effective date of the new rule.
- Going forward, the SEC proposes allowing discontinued contracts to follow one of two Great-West-like approaches. Both approach 1 and approach 2 would require annual delivery of a USP-like document. In addition, approach 2 would require issuers to update their registration statements whenever there are material changes to the offering (including to an underlying fund option).
- The access equals delivery option for underlying fund prospectuses would not be available for grandfathered contracts that continue to rely on the Great-West line of letters (but not approaches 1 or 2).
- Variable insurance product registrants would be required to submit Interactive Data Files containing data about their products using the Inline XBRL format.

The public comment period ends on February 15, 2019. ■

Sixth Circuit Holds Employer Has No Duty to Notify of Conversion Options

BY ADRIANA PEREZ

The Sixth Circuit recently held that an employer had no duty to notify employees of conversion options in group life insurance policies. In *Vest v. Resolute FP US Inc.*, the widow of a former employee alleged that Resolute breached its fiduciary duty under ERISA when it failed to notify her husband of his right to "port or convert" his optional group life policy into an individual life insurance policy once he ceased employment. In disagreeing with the plaintiff, the Sixth Circuit relied on three factors previously enumerated in *Sprague v. General Motors Corp.* to determine when a fiduciary may breach its duty to disclose.

In *Sprague,* the court held a fiduciary may breach its disclosure duty when (1) in response to a specific question by a participant, the plan provider gives a misleading or inaccurate answer; (2) a plan provider on its own initiative provides misleading or inaccurate information about the future of the plan; or (3) ERISA or its implementing regulations require the employer to forecast the future and the employer fails to do so.

Here, the court held that the test is not whether the plan provider should know that the former employee might be interested in converting his group life insurance – because he did not ask the question, the plan provider was not obligated to provide an answer. Further, the majority stated that the plaintiff failed to allege a misrepresentation regarding conversion rights. Finally, the court held that neither ERISA nor its implementing regulations required Resolute to provide any more information about conversion options than what was found in the summary plan description.

In a dissenting opinion, one judge observed that Resolute' s notice of employee benefit summary, which was sent without solicitation, failed to state that he needed to convert his optional group life insurance policy in order to retain coverage. The dissent opined that Resolute had a duty to provide full and complete information when providing information on its own initiative and, by not including information regarding conversion, had breached this duty. ■

Eleventh Circuit Reverses Dismissal of Insurer's Fraud and Racketeering Claims Against Premium Financer

BY GAIL JANKOWSKI

The Eleventh Circuit recently addressed the legal viability of federal racketeering, fraud, and declaratory relief claims by Sun Life against a premium finance company arising out of an alleged STOLI scheme, as well as the premium finance company's breach of contract counterclaims against the insurer under the insurance contracts issued by Sun Life.

According to Sun Life's complaint, Imperial Premium Finance engaged in a scheme to procure insurance policies through tortious and unlawful behavior, the crux of which was that:

- producers connected to Imperial falsely answered application questions about premium financing;
- after the policies were issued, Imperial concealed that it was making premium payments by "funnel[ing] [the] premium payments through the Bank of Utah and the Family Insurance Trust"; and
- Imperial deposited the funds for the insureds' policy payments into an account created at the Bank of Utah (in the name of the Family Insurance Trust), which then issued the payments to Sun Life.

Sun Life alleged that Imperial's procurement of the policies was concealed until it was too late for Sun Life to contest the validity of the policies. Sun Life sought a declaratory judgment that the policies were void *ab initio* and for damages under RICO, fraud, aiding and abetting fraud, conspiracy to commit fraud, and tortious interference with contractual relations. In response, Imperial asserted breach of contract counterclaims relating to the policy's incontestability clause and the policy's rights-and-privileges clause, as well as a counterclaim for fraud. The district court dismissed all claims brought by the parties.

On appeal, the Eleventh Circuit affirmed in part and reversed in part. It vacated the district court's dismissal of Sun Life's RICO, RICO conspiracy, fraud, aiding and abetting fraud, and tortious interference with contractual relations claims. Specifically, the panel found that the district court erred in dismissing Sun Life's fraud and RICO claims to the extent such claims alleged a conspiracy between Imperial and the producers. Imperial had argued that any fraud-based claims relating to the policies constituted a "contesting" of the policies and were therefore barred by the incontestability clause. The panel rejected that argument, reasoning that "[w]here [...] a life insurer sues alleging that it was fraudulently induced to enter into a life insurance contract but does not seek any relief that would call into question the continuing viability of the policy, we do not think that the insurer 'contest[s]' that policy."

As to Imperial's claims, the Eleventh Circuit affirmed the district court's dismissal of the breach of contract claim relating to the rights-and-privileges clause and the fraud claim; but it vacated the district court's dismissal of the breach of contract claim relating to the incontestability clause, reasoning that "an incontestability clause, like nearly all contractual prohibitions, may allow for damages upon its breach." ■

Class Certification Denied in Suitability Class Action

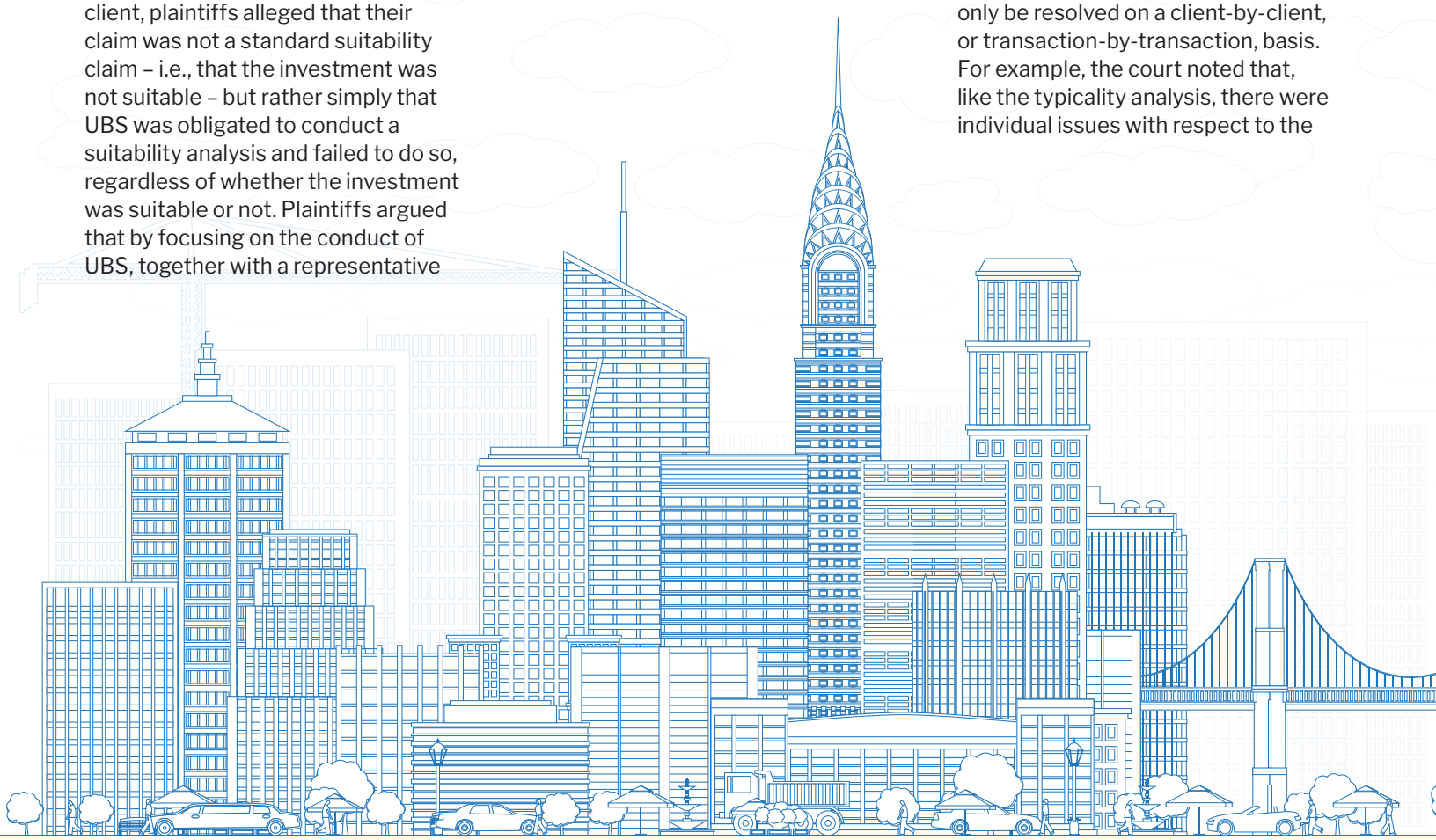
BY ADRIANA PEREZ AND TODD FULLER

The Southern District of New York recently declined to certify a class in a suit relating to investments in certain closed-end mutual funds, holding that individual questions overwhelmed the class-wide questions in contravention of the typicality and predominance requirements of Federal Rule of Civil Procedure 23.

In *Fernandez v. UBS AG*, plaintiffs brought a putative class action alleging that their broker-dealer, UBS, breached its client agreement by failing to perform any suitability analyses in connection with plaintiffs' investment in certain mutual funds. The mutual funds, which contained a high percentage of Puerto Rico government bonds, were downgraded to junk bond status and ultimately collapsed as a result of Puerto Rico's financial crisis. Plaintiffs sought to certify a class of all investors that purchased the highly leveraged mutual funds. Recognizing the inherently individualized nature of whether an investment was suitable for a particular client, plaintiffs alleged that their claim was not a standard suitability claim – i.e., that the investment was not suitable – but rather simply that UBS was obligated to conduct a suitability analysis and failed to do so, regardless of whether the investment was suitable or not. Plaintiffs argued that by focusing on the conduct of UBS, together with a representative sample of client accounts, common proof could establish whether UBS failed to conduct suitability analyses for putative class members. The court disagreed.

With respect to Rule 23's typicality requirement, the court explained that the manner in which UBS allegedly failed to perform a suitability analysis before recommending the mutual funds was different for each class member, thus making each proposed class member's claim unique. The court noted that the review conducted by plaintiffs' own expert reflected that UBS's alleged suitability failures were far from uniform and depended largely on the investment needs and objectives of each individual investor. As a result, the court held that typicality was not satisfied.

With respect to Rule 23's predominance requirement, the court concluded that although the nature of UBS's duties pursuant to the suitability provision in the client agreement was a common issue, that single common issue was substantially outweighed by numerous individual questions. The court explained that the issue of whether UBS breached the client agreement by failing to perform any suitability analysis could only be resolved on a client-by-client, or transaction-by-transaction, basis. For example, the court noted that, like the typicality analysis, there were individual issues with respect to the

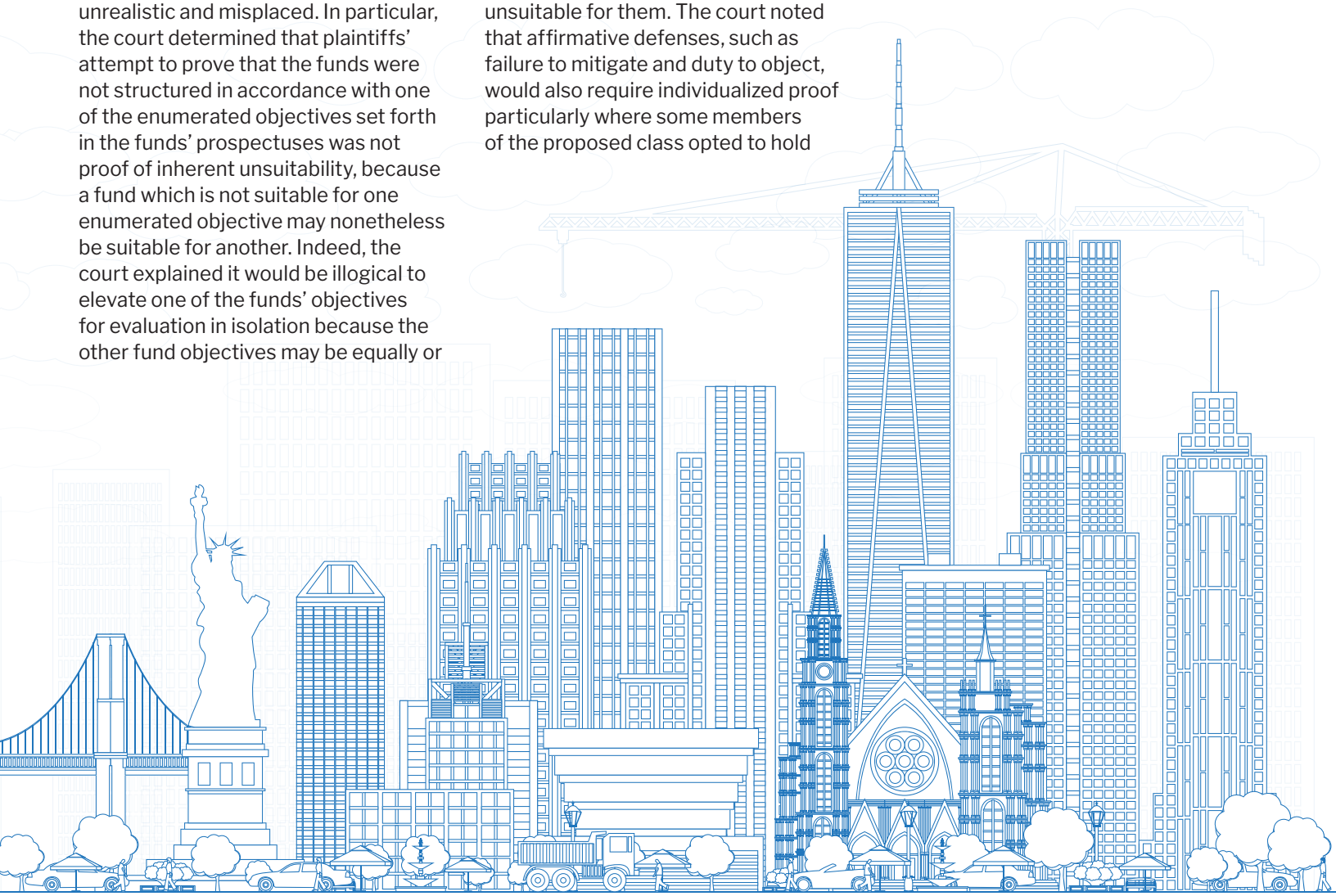


alleged breach because each investor had unique circumstances, objectives, risk tolerances, needs, and investment experience that would need to be examined.

Plaintiffs nevertheless argued that generalized proof could be used to demonstrate that the mutual funds were not suitable per se, and that such evidence would answer the question of whether UBS breached its contractual obligation to plaintiffs. In other words, plaintiffs argued that if the funds were not suitable for any reasonable investor, and UBS recommended them anyway, it would be clear that UBS did not undertake any suitability analysis before making the recommendations. The court, however, disagreed, noting that plaintiffs' efforts to prove that the funds were unsuitable per se were unrealistic and misplaced. In particular, the court determined that plaintiffs' attempt to prove that the funds were not structured in accordance with one of the enumerated objectives set forth in the funds' prospectuses was not proof of inherent unsuitability, because a fund which is not suitable for one enumerated objective may nonetheless be suitable for another. Indeed, the court explained it would be illogical to elevate one of the funds' objectives for evaluation in isolation because the other fund objectives may be equally or more important to other investors. The court also explained that UBS's alleged concern about the funds' riskiness was not proof that UBS failed to conduct a product-focused suitability analysis, because a security that is excessively risky for one investor is not proof that the security is excessively risky or unsuitable for all investors. The court held that these questions would not provide a common answer to whether UBS breached the suitability provision of the client agreement.

The court also noted that individualized issues would predominate with respect to causation, affirmative defenses, and damages. The court explained that causation was not subject to generalized proof because each plaintiff would be required to prove that the mutual funds were actually unsuitable for them. The court noted that affirmative defenses, such as failure to mitigate and duty to object, would also require individualized proof particularly where some members of the proposed class opted to hold their investments in the funds in the face of a recommendation to sell, and other investors failed to comply with their obligation to alert their broker if they believed the investment was unsuitable. As to damages, the court concluded that plaintiffs' damages model failed to measure only those damages attributable to the theory of liability they were advancing – proposing a measure of damages that is "yet another issue subject only to individualized proof."

Accordingly, the court denied plaintiffs' motion to certify, concluding "that the sole question of law or fact common to members of the proposed class [was] significantly outweighed by a number of questions affecting only individual members." ■



Life Insurer's Early Dispositive Motion Achieves Narrowed Fraud Claim in COI Suit

BY BROOKE PATTERSON

A recent decision by a federal district court in Maryland further illustrates the elusive nature of early dismissal of claims in far-reaching suits challenging the cost of insurance rate increases – even when some success is achieved via the rejection of underlying theories of liability. In *Rich v. William Penn Life Insurance Company of New York*, the plaintiff brought putative class breach of contract and fraud claims against William Penn arising from a COI rate increase announced in 2015 on certain universal life policies.

The gist of the fraud claim is that the COI rate increase was implemented to address alleged financial difficulties the insurer had been suffering for years, and that the insurer had misrepresented or failed to disclose these facts to policyholders before the announcement of the change in rates. Plaintiff alleged that he would have stopped paying premiums had the true nature of the defendant's financial condition been revealed. He also alleged that the insurer had used reinsurance transactions to disguise its financial instability.

In a September 25 ruling on its motion to dismiss the fraud claim, the district court rejected William Penn's arguments that the plaintiff lacked standing, New York's six-year statute of limitations barred the claim, and the elements of fraud were insufficiently alleged. However, with regard to its argument that the fraud claim was barred by New York's source of duty and economic loss rules, the insurer narrowed the scope of the claim. According to the plaintiff, there were three sources of William Penn's misrepresentations and omissions about its financial condition: the COI rate increase notification letter, the policy statements issued to putative class members, and the defendant's corporate reports and website.

The court dismissed the allegations predicated on the notification letter under both the source of duty and economic loss rules, because the alleged damages were the same as those sought in the breach of contract claim, and the "source of the duty" breached was the policy, not the notification letter. However, relying heavily on *Dickman v. Banner Life Insurance Company*, a previous decision in the same court on similar claims alleged against the defendant's parent corporation, the court refused to dismiss the fraud claim to the extent it was based on policy statements and William Penn's corporate reports and website. The court found that there was a plausible separate tort duty to avoid misrepresenting information in policy statements, which was not tied to the policy terms. Additionally, the court determined that the allegations relating to the corporate reports and website were analogous to a fraud-in-the-inducement claim, which would not be barred by either the source of duty or economic loss rule. ■

Defendants Not Liable for Insurance Agent's Ponzi Scheme

BY BRENDAN N. GOOLEY

A California appellate court recently affirmed the dismissal of claims against multiple insurers made by victims of a Ponzi scheme that was orchestrated by an independent insurance agent. The court concluded that the complaint offered no legal basis for holding the insurers liable for the wrongful acts of the sales representative based on his separate business activity as a financial advisor.

Sunil Sharma was a sales representative appointed by multiple life insurance companies. In addition, Sharma operated an independent business as a financial advisor. Sharma convinced some of his clients to surrender their annuity policies and invest the proceeds in a company he had started called Gold Coast Holdings, LLC. Gold Coast ultimately turned out to be the vehicle for Sharma's Ponzi scheme, and investors allegedly lost millions of dollars.

A number of individuals who had surrendered annuities to invest in Gold Coast sued the issuing insurers. The plaintiffs asserted, under an array of theories and causes of action, that the insurers were liable for the loss of their investments in Gold Coast. After allowing the plaintiffs multiple opportunities to amend their complaint, the trial court sustained the defendant insurers' demurrer and dismissed the complaint with prejudice.

The California Court of Appeal affirmed the dismissal of the complaint in a thorough opinion in *Rode v. Allianz Life Insurance Co. of N. Am., et. al.* The court concluded that Sharma was not acting in the scope of his agency relationship with the insurers when he convinced the plaintiffs to surrender their annuities and invest in Gold Coast. Sharma's relationship with the insurers was limited to the purchase of annuities and related tasks, the court explained. But his conduct regarding non-insurance investments, like Gold Coast, was part of his own financial advising business. The court reiterated that this was true notwithstanding the plaintiffs' allegation that Sharma's position as an appointed agent for sales of annuities enabled Sharma to convince the plaintiffs to surrender their policies. The court also concluded that the insurers did not owe the plaintiffs a duty to guard against or warn of Sharma's fraud because, given the distinctly different business activity underlying the fraudulent behavior, the insurers could not foresee that the plaintiffs were investing in a Ponzi scheme.

Accordingly, the court found that the plaintiffs "failed to establish any viable theory of liability—whether vicarious or direct—against the insurance companies." The court of appeals declined a request by one of the defendants to publish the opinion. ■

Court Upholds California Department of Insurance's Expansive Interpretation of Claims Practices Statute

BY JASON BROST

A California appellate court recently reversed the trial court's decision to enjoin the California Insurance Commissioner from enforcing certain regulations regarding unfair claim settlement practices. The Commissioner had found that PacifiCare Life & Health Insurance Company committed over 900,000 acts in violation of the Insurance Code. PacifiCare challenged this finding and convinced the trial court to bar the Commissioner from enforcing three of these regulations.

The first regulation provides that a violation occurs when a prohibited settlement practice is either "knowingly committed on a single occasion," or "performed with such frequency as to indicate a general business practice." PacifiCare argued that the violations must be both knowing and frequent, but the appellate court found the Commissioner's interpretation was in line with existing precedent, and that exempting single acts from enforcement would contravene the statutory intent that the Commissioner require full compliance with all provisions of the Code.

The second regulation defines the word "knowingly" to include implied and constructive knowledge. PacifiCare argued that this went beyond the ordinary meaning of "knowingly" and that it had been used against PacifiCare to punish inadvertent acts, but the appellate court found that this interpretation was reasonable, adding that a facial challenge could not be based on the particular facts of PacifiCare's case.

The third regulation defines the word "willful" without requiring a specific intent to cause harm or violate the law. PacifiCare contended this defeated the purpose of the Code's harsher penalties for willful violations, but the appellate court found that acts to which this definition was applied "are each defined by reference to specific facts and relevant context demonstrating wrongfulness," such that the definition would not cover truly innocent conduct.

PacifiCare has filed a petition for review with the California Supreme Court. We will continue to monitor the docket. ■

NEWS & NOTES

The Reinsurance Association of America Cat Risk Management Conference will be held February 26-28 in Orlando, FL. Shareholder and privacy and cybersecurity task force co-chair **Josephine Cicchetti** will speak on a panel about cyber risk issues.

Several members of the Carlton Fields financial services regulatory group participated in the 36th Annual Advanced ALI CLE Conference on Life Insurance Company Products, held on November 7-9, 2018, in Washington, D.C. Shareholder **Richard Choi** co-chaired the conference and co-led a pre-conference introductory workshop on the regulatory framework for life insurance company products and underlying investments. Panels included "NAIC 'A' Committee Initiatives and the Latest Innovations in the Design, Distribution, and Administration of Fixed and Fixed Indexed Annuities and Life Insurance Products" with panelist **Ann Black;** "Mutual Funds and Advisers: Key Regulatory and Litigation Developments" led by **Gary Cohen;** and "Disruptive Technologies in the Life Insurance Industry," with panelist **Josephine Cicchetti.**

The National COLI Directors Meeting was held on November 8 in New York. Shareholder **Josephine Cicchetti** spoke on cybersecurity's and security matters, and recent developments at the NAIC.

Carlton Fields hosted the third annual (Re)Insurance Latin American Regulatory Conference in the firm's Miami office on October 19. Fifty attorneys from Argentina, Brazil, Chile, Colombia, Mexico, Panama, and Peru attended the conference and spoke about legislative and regulatory priorities in their countries. Shareholder **Barry Leigh Weissman** moderated a panel on reinsurance developments in Latin America.

The firm sponsored this year's ACLI Annual Meeting, held on October 7-9 in Washington, D.C. Shareholder **Richard Choi** was a speaker for a session titled "Legal/Compliance: In Search of the "Perfect" Regulatory Balance" focusing on the interplay between industry and regulators and the attempts of both stakeholders to make regulations fit "just right."

Carlton Fields is a "Litigation Powerhouse" according to *BTI's Litigation Outlook 2019: Changes, Trends, and Opportunities for Law Firms*. It identifies top law firms that corporate counsel turn to for their most pressing litigation needs. The firm was named a "Standout" law firm in the areas of class action litigation, complex commercial litigation, and complex employment litigation, and on the "Honor Roll" for intellectual property litigation and securities and finance litigation.

Carlton Fields was selected as a finalist for *The American Lawyer*'s Litigation Department of the Year Award for Florida. The firm was chosen based on several key litigation victories in the past year. Those victories were achieved in key practice areas including appellate law, business litigation, class actions, environmental litigation, health care, labor and employment, property and casualty insurance, and white-collar crime and government investigations.

Carlton Fields was named the 2018 recipient of the Legal Services of Greater Miami's Equal Justice Pro Bono Large Firm Award for pro bono contributions in the areas of corporate and business advice for nonprofits and minority businesses, name changes for the transgender community, and probate matters for veterans.

The firm earned national first-tier rankings for four of its practices in the 2019 *U.S. News and World Report and Best Lawyers®* "Best Law Firms" guide. The firm also received high rankings for a multitude of its practices in several metropolitan areas.

Carlton Fields property & casualty insurance Shareholder **Steven Brodie** was recognized as the legal honoree at the University of Miami's Ninth Annual Law Alumni Association Homecoming Golf Tournament.

Carlton Fields welcomes the following attorneys to the firm: Shareholders **Lee Stapleton** (business litigation, Miami) and **Michael Yaeger** (white collar crime and government investigations, New York), Of Counsel **Michael Jo** (real estate, New York), and Associates **Roben West** (property and casualty insurance, Atlanta), **Samantha Culp** (real property litigation, Tampa), **David Chee** (business litigation, Miami), **Chelsey Clements** (business litigation, Orlando), **Ryan Forrest** (business litigation, Miami), **Megan Dhillon** (health care, Washington, D.C.), and **Kristen Murphy** (health care, Tampa).

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