

# Carlton Fields Defends Transamerica Life Insurance Company in Putative Class Action Involving Long-Term Care Insurance

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## **LEAD COUNSEL**

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***Howisey V. Transamerica Life Insurance Co.***

In March 2019, Carlton Fields' Miami attorneys successfully defended Transamerica Life Insurance Co. in a putative class action involving long-term care insurance. A unanimous panel of the Ninth Circuit affirmed the Washington district court's ruling granting summary judgment to Transamerica. The firm's National Class Action attorneys handled the case from inception through

resolution of the appeal.

The plaintiff in the case sought to represent all insureds in the state of Washington with long-term care insurance policies issued or administered by the company, whose claims for nursing home benefits had been denied because the facility in which the insured was located was not licensed as a nursing home under state law. Although the plaintiff resided in a facility licensed as an assisted living facility and not as a nursing home, the lawsuit claimed that the company was nevertheless required to pay benefits under a novel interpretation of state laws and regulations that, according to the plaintiff, required the court to rewrite the policy to eliminate the licensing requirement.

Carlton Fields' strategy included removing the case to federal court in Seattle under the Class Action Fairness Act and moving for an early summary judgment, before the end of discovery and before the

plaintiff moved for class certification. In a hotly contested battle of cross-motions for summary judgment and the plaintiff's motion for additional discovery, Chief Judge Ricardo S. Martinez of the U.S. District Court for the Western District of Washington granted summary judgment to Transamerica. The court agreed with the contract and legal arguments crafted by the Carlton Fields team, holding that the plaintiff was not entitled to represent a class because he did not, himself, have a viable theory of liability.

The plaintiff appealed, with the support of a consumer advocacy group as amicus curiae, and on March 4, 2019, Carlton Fields attorney Julianna Thomas McCabe argued the appeal to the Ninth Circuit. The Ninth Circuit panel unanimously affirmed the district court in all respects and adopted all of the arguments advanced by the Carlton Fields team.

The Ninth Circuit affirmance is a significant win for the industry. A negative result could have required a change in contract interpretation by insurers with similar long-term care insurance policies, would have likely driven up the cost of premiums for all policyholders, and threatened similar litigation for the industry as a whole.

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Julianna Thomas McCabe



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