

# Harsh Justice

July 08, 2014

Concerned that its own decision might have "the potential to conflict" with that of the Pennsylvania Insurance Department, a Pennsylvania federal court relied on the primary jurisdiction doctrine to dismiss a putative class action complaint in *Harshbarger v. Pennsylvania Mutual Life Insurance Company*. Where regulated entities are concerned, this decision demonstrates the potential persuasive power of arguing that a court should abstain from entertaining the merits of claims encompassed by the "jurisdiction, expertise, and regulatory authority" of the applicable regulatory agency – even if the claim is framed as a breach of contract action. In *Harshbarger*, plaintiffs, holders of participating whole-life insurance policies, alleged that the insurer failed to pay them the full amount of annual dividends from the divisible surplus due under the terms of their policies. In its primary jurisdiction analysis, the court closely considered whether the question at issue involved "policy considerations within the Department's particular field of expertise ... [and] discretion" and posed "substantial danger of inconsistent rulings" if the court attempted to resolve plaintiffs' claim. First, the court reasoned, plaintiffs' claims relied on the application of Pennsylvania statutes to create an obligation that otherwise did not exist in their contracts. Second, Pennsylvania law "expressly vests the Department with discretion" to determine when exceptions will be granted, including the power to "permit any corporation to accumulate and maintain a surplus or safety fund in excess of the limit" set by law. Third, "the Department's oversight of [defendant's] solvency, financial condition, and surplus levels is an ongoing endeavor," such that "a decision by this Court has the potential to conflict with the Department's ... exercise of its authority and discretion."

## Related Industries

[Life, Annuity, and Retirement Solutions](#)

given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.