

Illinois Federal Court Rejects Twin Suits Challenging Dividend Payment Practices

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Challenges to mutual life insurers' discretion in setting dividend scales date back over 100 years. Earlier this year, in *Anderson v. Country Life Insurance Company* and *Ochoa v. State Farm Life Insurance Company*, a federal court in Illinois dismissed twin putative class action lawsuits filed against a pair of insurers. The suits alleged that the insurers breached their respective participating life insurance policies by failing to pay the full amount of annual policy dividends contractually owed to policyholders. Via a single January 16 ruling, however, the district court judge rejected the plaintiffs' theory of liability. Notably, the plaintiffs' breach of contract claims were not predicated on the express language in their policies. Instead, *Anderson* and *Ochoa* pointed to sections 243 and 224(e) of the Illinois Insurance Code. As summarized by the court, section 243 "dictates how much life insurance companies can retain in a 'contingency reserve,'" and Section 224(e) "mandates a number of provisions that must be included" in participating policies, including "a provision that the policy shall participate annually in the surplus of the company." The plaintiffs conceded that Section 243, which, as the court pointed out, "addresses the financial management of life insurance companies, not the relationship between the companies and their policies," does not address disbursement of dividends. Moreover, the court explained that the plaintiffs "implicitly acknowledge" that their policies comply with Section 224(e). Nevertheless, the plaintiffs contended that Section 224(e)'s requirements were wrongfully "weakened" as a result of the insurers' alleged failure to comply with Section 243. According to the plaintiffs, Section 243 is incorporated into their policies as a matter of law, making any noncompliance a contractual breach. The court found this contention "flatly wrong." First, characterizing it as part of a "complicated narrative," the court rejected the plaintiffs' effort to support their contention with legislative history, including that of jurisdictions outside Illinois. The court reasoned that this was "simple: because the court finds plaintiffs' policies unambiguous ... the court need not, and should not, look to legislative history at all." Nor, it continued, should it "consider any evidence beyond the four corners" of the life insurance policies. Next, the court recognized the plaintiffs' failure, and inability, to allege that their policies even mentioned

Section 243. Indeed, Section 243 "says nothing of insurance contracts or policyholders, and plaintiffs' policies say nothing of Section 243." Ultimately, the court concluded that the plaintiffs could not seek relief through a breach of contract claim. At best, notwithstanding an absent private right of action to enforce the statute, the plaintiffs' theory was tantamount to an alleged failure on the part of the insurers to comply with Section 243. But even if plaintiffs were right that the defendants had failed to comply, it would have "no bearing on plaintiffs' contracts with the defendants." Both plaintiffs have appealed the ruling to the Seventh Circuit, which has consolidated the appeals.

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