

UCL and Financial Elder Abuse Claims Against Life Insurer Are Time-Barred

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Life insurers in California are all too familiar with claims based on alleged violations of senior notice statutes and financial elder abuse. In *Rhinehart v. Genworth Life & Annuity Insurance Co.*, a California federal court recently dismissed such a case, holding that the plaintiff's Unfair Competition Law (UCL) and elder abuse claims were barred by the relevant statutes of limitations.

In 2011, the plaintiff, who was 72 years old when he bought the life insurance policy at issue, brought a putative class action in California state court, alleging that the defendant-insurer had violated provisions of the California Insurance Code requiring life insurance companies to provide certain disclosures relating to free look periods and surrender charges on the cover page or policy jacket of policies sold to consumers 60 years of age and older. The complaint asserted claims for unfair business practices under the UCL and financial elder abuse. The putative class consisted of California seniors who had purchased policies from the defendant and sought the return of commissions and profits, including surrender charges, punitive and treble damages for the elder abuse claim, and attorneys' fees.

The defendant removed the action to the Eastern District of California pursuant to the Class Action Fairness Act (CAFA) and moved to dismiss, arguing that the plaintiff's claims were barred by the relevant four-year statute of limitations. The plaintiff sought to remand the case to state court, challenging the defendant's calculation of the \$5 million jurisdictional threshold under CAFA. The court, however, determined that the defendant's calculation of potential surrender charges based on the complaint's allegations, and its addition of potential attorneys' fees, which it supported by pointing to the approval of a settlement involving similar claims, satisfied the CAFA threshold. Because the total amount in controversy exceeded \$5 million, the court denied the motion to remand.

With respect to the defendant's motion to dismiss, the court determined that the claims were time-barred. Because financial elder abuse claims accrue when an insurance policy is executed and delivered, and because UCL claims accrue at the time of the defendant's alleged misrepresentation or omission, the court held that the claims accrued in 2011 when the plaintiff purchased the policy. In an effort to avoid the limitations period, the plaintiff argued that he did not discover the problems with his policy until after his daughter found old renewal notices and he spoke to an attorney. However, the court held that for the discovery rule to apply, the plaintiff was required to allege facts showing that his failure to discover the relevant facts sooner was reasonable rather than negligent. The court held that the plaintiff had failed to allege any such facts and that the plaintiff's age alone was insufficient to make the required showing. Accordingly, the court dismissed the complaint, but granted the plaintiff a single opportunity to amend.

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