

Annuity Litigation Roundup

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Court Emphasizes Disclosure Substance Over Form

A recent decision in *Nofsinger v. Jackson National Life Insurance Co.* shut down a putative class action in which the plaintiff alleged she surrendered her annuity contract after receiving a deceptive letter regarding her contract options from Jackson National and was then charged an improper surrender charge.

In *Nofsinger*, the plaintiff purchased a dual fund annuity contract from Jackson National as a supplemental retirement plan vehicle for teachers in 1991. A dual fund annuity differs from a traditional annuity in that it accrues at two different values: a cash surrender value and an accumulated value. A policyholder can withdraw either the partial or full amount of the cash surrender value at any time before the maturity date. However, to collect the accumulated value, rather than the cash surrender value, the policyholder must wait until the annuity's maturity date and then receive distributions over a minimum 60-month period.

In 2017, Jackson National sent the plaintiff a letter informing her that her annuity's maturity date was approaching and requested that she select an option for receiving annuity proceeds. The letter offered four different options, including a lump sum payout, which was defined as a partial or full liquidation. At the time, the accumulated value of her annuity was \$104,000, and the cash surrender value was \$86,000. The plaintiff selected the lump sum option allegedly believing that she would receive the full accumulated value of her annuity. Jackson National subsequently confirmed the plaintiff's request and paid her the cash surrender value of \$86 thousand, referring to the difference as a "surrender charge." The plaintiff brought suit on behalf of herself and a putative class of individuals who received this type of letter from Jackson National and was subsequently assessed a "surrender charge" — a term not included in the annuity contract — asserting a variety of common law and statutory claims.

Jackson National moved for summary judgment on the breach of contract and violations of Illinois consumer fraud act claims contending that these claims failed as a matter of law. The court agreed. The court noted that the use of the term "surrender charge" in the Jackson National disbursement letter did not establish a breach of contract. The court explained that regardless of the terminology used, Jackson National performed properly under the terms of the annuity and paid the plaintiff

exactly what she was entitled to receive when she selected the lump sum payout. The court noted that the “surrender charge” was simply the difference between the accumulated value and the cash surrender value and these amounts had been shown to the plaintiff on every statement throughout the life of the annuity.

With respect to the Illinois consumer fraud act claim, the court held that there was nothing deceptive in the Jackson National letter and nothing ambiguous about the term “lump sum payout,” which could be discerned from the annuity and surrender letter and was clearly an alternative to receiving an annuity payment over time. The court also rejected the plaintiff’s argument that the reference to a “surrender charge” was really the imposition of a new fee, noting that it was simply the difference between the accumulated and cash surrender values and not some new or additional charge.

The court also denied the plaintiff’s motion for class certification because both the class and subclass rested on the surrender charge theory, which failed as a matter of law. The court held that “no class member could sustain a cognizable surrender charge claim based on the legal theories put forward,” thus ending the plaintiff’s class aspirations.

In *Williams v. National Western Life Insurance Co.*, a California appellate court recently addressed several important questions involving the actions of wayward insurance brokers and the corresponding duties of insurance companies.

Seeking to update his trust and estate plan, plaintiff Williams met with Pantaleoni, an independent insurance agent. Pantaleoni had Williams sign a blank check and additional documents, which Williams thought related to the trust. Unbeknownst to Williams, the documents included a National Western Life Insurance Co. annuity application. Although Williams signed the application, he did not fill out any information. Once Pantaleoni delivered the annuity, Williams canceled the annuity within the free look period. Pantaleoni thereupon had Williams sign, again without his knowledge, another annuity application and two letters rescinding the cancellation of the annuity. Williams ultimately surrendered the annuity and received the cash value.

Thereafter, Williams sued Pantaleoni and National Western for elder financial abuse, negligence per se, fraud, and breach of fiduciary duty. Williams alleged that National Western knew or should have known of Pantaleoni’s prior misconduct, which included a Department of Insurance action and restricted license, multiple bankruptcy filings, lack of errors and omissions insurance, using a legal services company to sell insurance products, and that National Western failed to investigate Pantaleoni’s misconduct. The case proceeded to trial, with judgment entered against National Western.

Agent or Independent Contractor?

National Western filed post-trial motions, arguing that Pantaleoni was not National Western's agent for the transactions with Williams, which were denied. On appeal, the judgment against National Western was reversed.

The appellate court held that Pantaleoni's relationship to National Western was that of an independent contractor, that Pantaleoni had no authority to bind National Western, and that National Western had no duty to supervise Pantaleoni.

Duty of Good Faith and Fair Dealing; Negligence?

The court rejected Williams' argument that National Western had a statutory duty of good faith and fair dealing under the California Insurance Code, as the statute did not create a private right of action. The court also rejected the argument that the code's suitability requirements created a duty of care for a negligence claim. The opinion emphasized that an insurer has the right to rely on the answers provided by an insured in an insurance application, including suitability information.

Additionally, the court stated that a negligence claim could not be based on a prior settlement between National Western and the California insurance commissioner, as the settlement was not an admission of truth, and Williams could not enforce the settlement agreement as a nonparty.

Elder Abuse?

On the elder financial abuse claim, the appellate court held that simply accepting the premium and issuing the annuity, or processing the surrender request, was not evidence that National Western knew or should have known about Pantaleoni's fraudulent conduct. Further, National Western, as an insurance company, was not a mandated reporting entity under the applicable elder financial abuse statute and did not have a duty to investigate the transactions.

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