CARLTON FIELDS

Ninth Circuit Finds Bonus Indexed Annuity Delivers Exactly What was Promised

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Observing that it "delivered precisely what it promised," the Ninth Circuit Court of Appeals recently affirmed summary judgment for an insurer in a case alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) and state consumer fraud laws related to its sale of annuities. In *Eller v. EquiTrust Life Insurance Co.*, the purchaser of a bonus indexed annuity brought a putative class action alleging that the insurer engaged in fraud and challenging the annuity's premium bonus, the use of a "market value adjustment," and the insurer's alleged attempt to evade state nonforfeiture laws through its application of maturity dates. The annuities at issue used "index credits," which would increase the value of an individual's account based on changes in a market index like the S&P 500. Additionally, a market value adjustment, also based on an external index, might be applied upon the early withdrawal of funds or surrender of the annuity, resulting in a positive or negative adjustment of the account's value. Finally, the annuity included a bonus feature through which the account was credited with a bonus consisting of 10 percent of premiums paid during the first year. The court first disposed of plaintiff's claim that the premium bonus was fraudulent, determining that "a seller generally has no duty to disclose internal pricing policies or its method for valuing what it sells." **Because the insurer owed no fiduciary or statutory duty to the plaintiff, it had no obligation to disclose that an annuity with a bonus feature might have lower index credits than alternative products.** Additionally, since the plaintiff received exactly what he was promised, the bonus was not illusory, nor had the insurance company made any affirmative misrepresentations. The court dismissed plaintiff's state law claims alleging violations of consumer fraud statutes and unjust enrichment for the same reasons. The court further rejected plaintiff's claim that the formula for the market value adjustment, which would increase downward adjustments and decrease upward adjustments, was not properly disclosed in the marketing materials. It noted that the insurer "meticulously explain[ed]" the market value adjustment and how it was applied. The court also disagreed with plaintiff's position that the company's policy of providing relief from the annuity's fixed maturity date at an individual's request converted the annuity into one with an optional maturity date that must comply with specific provisions of the state nonforfeiture law.

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