

# Carlton Fields Defends Transamerica in Putative Class Action Involving Long-Term Care Insurance

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In April 2019, a unanimous panel of the U.S. Court of Appeals for the Ninth Circuit issued its mandate affirming summary judgment in favor of Transamerica Life Insurance Co. in a putative class action involving long-term care insurance. Attorneys from Carlton Fields' National Class Actions Practice handled the case from inception through resolution of the appeal.

The plaintiff in the case, who sought to represent all insureds under long-term care insurance policies in the state of Washington, filed suit seeking nursing home benefits, despite residing in an assisted living facility that was not licensed as a nursing home, as required as the policy. The plaintiff argued that the company was required to pay nursing home benefits under a novel interpretation of various state laws and regulations that, according to the plaintiff, required the court to rewrite the policy to eliminate the licensing requirement.

Carlton Fields' strategy included removing the case to federal court in Seattle under the Class Action Fairness Act and moving for an early summary judgment, before the end of discovery, based on well-established principles of contract interpretation. In a hotly contested battle of cross-motions for summary judgment and the plaintiff's motion for additional discovery, Chief Judge Ricardo S. Martinez of the U.S. District Court for the Western District of Washington granted summary judgment to Transamerica and denied any further discovery. The court agreed with the contractual and legal arguments crafted by the Carlton Fields team, holding that the plaintiff was not entitled to represent a class because he did not, himself, have a viable theory of liability.

The plaintiff appealed, with the support of a consumer advocacy group as *amicus curiae*, and the Ninth Circuit panel affirmed the district court in all respects and adopted all of the arguments

advanced by the Carlton Fields team.

The judgment was an appropriate and significant win for the industry. A negative result could have required a change in contract interpretation by insurers with similar long-term care insurance policies, would have likely driven up the cost of premiums for all policyholders, and threatened similar litigation for the industry as a whole.

*Carlton Fields' attorneys Markham Leventhal, Julianna McCabe, Jason Kairalla, and Andy Chagui handled the case for Transamerica, and Julianna McCabe argued the appeal to the Ninth Circuit.*

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