

# Summary Judgment Victory for Life Insurer in Annuity Class Action

SECURITIES AND DERIVATIVE LITIGATION | LIFE, ANNUITY, AND RETIREMENT LITIGATION | FINANCIAL SERVICES REGULATORY | MARCH 31, 2014



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In *Tabares v. Equitrust Life Ins. Co.*, a California Superior Court granted summary judgment in favor of Equitrust in a class action on behalf of a previously certified class of California policyholders of certain market-indexed annuities.

The plaintiffs alleged that Equitrust breached the contracts in the manner in which it calculated both the minimum fixed interest rate, and the maximum caps on certain indexed-fund return rates; and in its application of the policies' premium bonus provisions. The plaintiffs also alleged wrongdoing related to Equitrust's sales practices. Based on the foregoing, they alleged breach of contract, fraud, violation of California's Unfair Competition Law, and declaratory relief claims.

The court previously certified a class of all California policyholders of four particular annuity products for the breach of contract claims, but denied certification based on any of the other theories. Notably, however, the breach of contract claim was treated as containing a claim for breach of the implied covenant of good faith and fair dealing.

In its recent decision granting summary judgment, the court rejected both the express and implied contract theories. First, it held that the express terms of the contract supported Equitrust's position that the premium bonuses were properly calculated and applied.

Second, **it held that the discretion the contract afforded Equitrust to set renewal rates for the fixed rate provisions and the index caps, and the manner in which Equitrust calculated those rates, was not objectively unreasonable**, and therefore did not support a claim for breach of the implied covenant of good faith and fair dealing. The court held that, because Equitrust exercised its discretion within the scope of the contract's express terms, "its use of that discretion to pursue its own advantage, even at the expense of class members is simply not actionable."