

Dismissal of Individual Claims Cap Insurer's Winning Streak in Action Challenging FIA Product Features

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In May, the Southern District of California handed ING a win in a case involving allegations that the company targeted seniors with annuities that hid an embedded derivative structure that made them worth less than promised. *Abbit v. ING USA Annuity & Life Ins. Co.* The court previously granted plaintiff's motion for class certification in part but thereafter granted summary judgment in ING's favor on all of the certified class claims. ING subsequently moved for summary judgment on the remaining individual claims as well, which included causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, failure to supervise, fraud, and violations of the California Unfair Competition Law (UCL) and False Advertising Law (FAL).

The court followed up on its prior ruling by granting ING's motion for summary judgment on the individual claims as well. In particular, plaintiff failed to show that he was charged anything that violated a contractual term or that ING failed to credit interest as the policy required. The court further found that ING had acted in good faith in exercising its discretion regarding interest-crediting strategies. Moreover, ING did not owe plaintiff a fiduciary duty under California law, nor did it have a duty to supervise the independent agents who sold its annuities. Plaintiff likewise failed to show that ING had violated the UCL and FAL in connection with its sales brochures and applications, which provided relevant disclaimers, and ING had not made misrepresentations or failed to disclose the embedded derivatives for purposes of the fraud claim.

Instead, the contract explained how interest was credited, the embedded derivatives were disclosed in public SEC filings, and ING had no duty to disclose its pricing and ratemaking policies. In its decision, the court emphasized that plaintiff had acknowledged on his application that, except for guaranteed minimums, the values shown were not guaranteed, and he had spoken only with his independent agent rather than ING before and after purchasing the contract. Given these findings, ING was entitled to judgment as a matter of law.

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