

Summary Judgment for Insurer in Annuity Sales Practices Action

CLASS ACTIONS | LIFE, ANNUITY, AND RETIREMENT LITIGATION | FINANCIAL ELDER ABUSE | LIFE, ANNUITY, AND RETIREMENT SOLUTIONS | CORPORATE LAW AND GOVERNANCE | JUNE 23, 2017

On March 31, in *Chambers v. N. American Co. for Life & Health Ins.*, an action alleging RICO violations and other claims in the sales of deferred annuities to seniors, the Southern District of Iowa granted the insurer's motion for summary judgment. Like many of the bonus annuity class actions brought in the mid-2000s, the plaintiff in *Chambers* claimed that the insurer misrepresented the terms of the bonus, that there were no "sales fees," and that the interest adjustment applied to partial surrenders. She also brought claims for violation of the standard nonforfeiture law and alleged unjust enrichment.

A year ago, the district court denied her bid for certification of a nationwide class. It held that plaintiff could not prove causation via common proof — even if the varying written materials were sufficiently uniform. The court found testimony that the named plaintiffs did not read those materials, plus an informal poll of class members, sufficient to show that there was no singular causal link between the defendant's representations and injuries to the class. The court also determined that the nonforfeiture laws of the states varied across time and states.

Nearly a year later, the court entered judgment for defendant on the remaining individual claims. It first addressed the RICO claims, and held that there was no cognizable RICO enterprise because the insurer and the agents did not share a common fraudulent purpose and did not have sufficient relationships. Nor was there a continuity of relationships, where the agents ceased their appointment with the companies years before.

Significantly, the district court also held there was no scheme to defraud. Specifically, the court said the alleged "sales charges" misrepresentation was nonsensical, the plaintiffs' annuities were credited with the bonus and interest credits in exactly the way the contract promised, and the interest adjustment formula itself was set forth in the marketing materials.

Plaintiff's breach of contract claim rested on the premise that the contracts violated their states' nonforfeiture laws as applied to optional maturity date contracts, versus contracts with set maturity dates (which plaintiffs' annuity contracts had). The court relied heavily on the Ninth Circuit's 2015 decision in *Eller v. EquiTrust Life Insurance Company*, rejecting this argument. Finally, it found that the plaintiff could not bring a claim for unjust enrichment where a contract governed the terms of the parties' relationship.

Plaintiff has filed an appeal.