Class Action Roundup

LIFE, ANNUITY, AND RETIREMENT LITIGATION | LIFE, ANNUITY, AND RETIREMENT SOLUTIONS | SECURITIES & INVESTMENT COMPANIES | SECURITIES TRANSACTIONS AND COMPLIANCE | FINANCIAL SERVICES REGULATORY | OCTOBER 4, 2019

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Class actions against life insurers come in all shapes and sizes. The following decisions illustrate some of the issues life insurers are currently facing:

McClendon v. North Carolina Mutual Life Insurance Co. **(M.D. Tenn. 2019)**

In *McClendon*, the plaintiff's mother purchased a whole life insurance policy to insure the plaintiff's brother, and subsequently took out a loan on the policy. When the brother died, the plaintiff assigned the policy proceeds to a funeral home. The plaintiff was not satisfied with the policy benefit calculation and filed a class action complaint, claiming that similar problems affected thousands of policyholders.

The plaintiff alleged that the insurer breached the contract in three ways: (1) by charging premiums for riders past their term; (2) by applying an incorrect amount of interest to policy loans; and (3) by failing to properly credit payments to the loan balance.

The insurer did not dispute that it applied an incorrect interest rate to the loan amount. Indeed, the insurer admitted that it attempted to correct the mistake by sending the plaintiff a check, which he did not cash. Because the insurer did not contest that it breached the contract with respect to the calculation of interest on the loan, the court granted summary judgment in the plaintiff's favor as to interest calculations made within the six-year statute of limitations.

The court otherwise denied summary judgment to the plaintiff on his breach of contract claims. With respect to the plaintiff's claim that the insurer continued to charge the plaintiff for waiver of premium and accidental death riders after their terms ended, the court held that the continuing payment and acceptance of premiums extended the benefits under the riders beyond their original terms. If the plaintiff had suffered a qualifying event, the court reasoned, his beneficiary would have been entitled to payment pursuant to the rider. That kind of "mutual extension" did not constitute a breach of contract under Alabama law. In addition, because the parties disputed whether the insurer properly credited loan payments to the policy loan's balance, the plaintiff failed to establish that there was no dispute of material fact to warrant entry of summary judgment.

The insurer also moved to dismiss the plaintiff's Alabama and North Carolina deceptive trade practices claims. The court dismissed the North Carolina claim because Alabama had the most significant relationship to the policy. The court also dismissed the Alabama claim because life insurance loans were subject to the Alabama Insurance Code and exempt from Alabama's deceptive trade practices statute. Finally, the court dismissed the plaintiff's unjust enrichment claim because the existence of a valid contract forecloses such a claim, and neither party contested the existence or validity of the insurance policy or loan agreement.

Goostree v. Liberty National Life Insurance Co. **(N.D. Ala. 2019)**

In *Goostree*, the plaintiffs filed a putative class action alleging that the insurer operated a scheme to sell low face-value life insurance policies to low-income consumers. According to the plaintiffs, the insurer targeted undereducated consumers and charged premiums that far exceeded the policies' face value, thereby generating profits for the insurer and its agents but providing no economic benefit to the plaintiffs.

In particular, the plaintiffs claimed that their agent induced them to purchase multiple insurance policies — for which the collective premium exceeded $14,000 a year — even though one plaintiff earned less than $16,000 a year and the other was retired and receiving Social Security benefits. When the plaintiffs sought to cash out a policy because they could no longer afford the premiums, the agent allegedly explained that a cash out was not permitted and suggested they instead convert their policies to a "reduced paid-up policy," which would no longer obligate the plaintiffs to pay premiums but would reduce their death benefit from $134,000 to $45,000. The plaintiffs alleged that, by this time, they had paid $188,000 in premiums.

The plaintiffs asserted various individual and class action claims against the insurer, including breach of contract; breach of implied covenant of good faith and fair dealing; conversion; rescission; unjust enrichment; declaratory and injunctive relief;

negligence, willfulness and/or wantonness in the recommendation and sale of life insurance policies; and negligent and/or wanton training and supervision. The plaintiffs also asserted claims for breach of contract; breach of implied covenant of good faith and fair dealing; declaratory and injunctive relief; and negligence, willfulness, and/or wantonness in the recommendation and sale of life insurance policies against the agent.

The insurer removed the case to federal court, arguing that the plaintiffs had fraudulently joined their agent. The court concluded that the complaint did not allege a special relationship between the plaintiffs and their agent; thus, the plaintiffs failed to plead that the agent owed them any duty. And no contract existed between the plaintiffs and the agent. Because the plaintiffs failed to state any claim against the agent, the court held that the plaintiffs had fraudulently joined their agent. The court dismissed the agent from the action, which allowed the court to hold that it had diversity jurisdiction. The court also concluded that it had jurisdiction under the Class Action Fairness Act (CAFA) because the alleged amount in controversy exceeded CAFA's $5 million minimum and because the plaintiffs failed to demonstrate that CAFA's local controversy exception applied.