

Sales Practices – Market Conduct Litigation

Overview

Our litigators have wide-ranging experience defending insurers in lawsuits alleging the improper sale or marketing of life insurance and annuity products. Our attorneys have successfully dismissed, settled, and won trial victories in class actions claiming that the sales of annuities were misleading. Similar allegations in connection with the sale and marketing of long-term care policies have met with an insurmountable defense. Our litigators have defeated allegations of vanishing premiums and/or improper replacement of life insurance policies. They have efficaciously defended against claims arising from IRS Sections 412(i) and 409, the TCPA, and other various statutes and common law legal theories.

Experience

Annuity Class Action Litigation

- *In re Am. Inv'rs Life Ins. Co. Annuity Mktg. & Sales Practices Litig.*, No. 2:05-md-01712, 2008 WL 2246989 (E.D. Pa. May 30, 2008) – Dismissing putative class of annuity beneficiaries alleging misrepresentations in the sale of deferred annuities.
- *In re Life USA Holding, Inc.*, 242 F.3d 136 (3d Cir. 2001) – Decertification of nationwide class of insureds asserting claims of fraud in connection with the sale and administration of bonus annuities.
- *Mooney v. Allianz Life Ins. Co. of N. Am.*, No. 0:06-cv-00545, 2010 WL 419962 (D. Minn. Jan 29, 2010) - Defense jury verdict following three-week trial in 350,000-member sales practices class action.
- *Negrete v. Allianz Life Ins. Co. of N. Am.*, No. 2:05-cv-06838, 2013 WL 6535164 (C.D. Cal. Dec. 9, 2013) – Obtained favorable settlement in nationwide annuity sales practices class action.
- *Nichols v. John Hancock Life Ins. Co.*, No. 2:09-cv-00840, 2009 WL 3019785 (N.D. Ala. Sep. 22, 2009) - Dismissing putative class action involving alleged breach of an annuity contract.
- *Ostrow v. Allianz Life Ins. Co. of N. Am.*, No. 2009 CA 007621 B (D.C. Super. Ct. 2011) - Dismissal of representative action alleging consumer protection claims against insurer.
- *Rivera v. Allianz Life Ins. Co. of N. Am.*, No. 2:10-cv-02266, 2011 WL 2619129 (D. Nev. June 30, 2011) – Obtaining dismissal at pleading stage of putative class action alleging improprieties in sales of deferred annuities.
- *Smith v. John Hancock Ins. Co.*, No. 2:06-cv-03876, 2008 WL 4145709 (E.D. Pa. Sept. 3, 2008) – Class certification denied in case involving deferred bonus annuities.

Long-Term Care

- *Alvarez v. Ins. Co. of N.A.*, 313 F. App'x 465 (3d Cir. 2008) – Affirming district court's dismissal of long-term care class action.
- *Bradberry v. John Hancock Life Ins. Co.*, 222 F.R.D. 568 (W.D. Tenn. 2004) – Decertification of a class of long-term care insurance policy owners.
- *Mann v. Unum Life. Ins. Co. of Am.*, 139 So. 3d 895 (Fla. 2d DCA 2014) – Obtained a dismissal of a class action complaint seeking a declaration that guaranteed-renewable long-term care insurance policies issued for delivery outside of Florida transform into Florida policies once the policyholders move into the state; the policies gave Unum the ability to increase premiums for the next renewal period, as long as the premium increase is approved by the state office of insurance regulation. The plaintiffs contended that any rate increase approved outside of Florida and applied to Florida residents' policies after they relocate into Florida would be invalid. The appellate court affirmed.
- *Smith v. Jefferson Pilot Fin. Ins. Co.*, No. 1:07-cv-10228 (D. Mass. 2010) – Successful defense of attempted amendment of complaint to convert individual long-term disability ERISA claim to assert claims on behalf of three different classes.

Long-Term Disability

- *Doe v. Hartford Life & Accident Ins. Co.*, No. 2:05-cv-02512, 2008 WL 5400984 (D.N.J. Dec. 23, 2008) – Summary judgment granted for insurer in ERISA class action challenging 24-month mental illness limitation on benefits.

Sales Practices – Vanishing Premium/Replacement

- *Adams v. S. Farm Bureau Life Ins. Co.*, 493 F.3d 1276 (11th Cir. 2007) – Claims as to replacement life insurance policies barred by earlier class action settlement and release.
- *Hallabrin v. Alexander Hamilton Life Ins. Co. (Jefferson Pilot Ins. Co.)*, No. 2:98-cv-75597 (D. Mich. 2009) – Resolved class action through low six-figure settlement with clients of Alexander Hamilton Life agent who allegedly improperly replaced their permanent policies with universal life policies.
- *Humphrey v. Allstate Life Ins. Co.*, No. 99 CH 8383 (Ill. Cir. Ct.) – Class certification denied to class alleging fraudulent sales practices.
- *Kudera v. Fehring (Jefferson Pilot Life Ins. Co.)*, No. 2:98-cv-00237 (E.D. Ky. 2000) – Defused effort to certify nationwide class of “vanishing premium” claims in sale of universal life contracts through individual policyholder settlement.
- *McCord v. Minn. Mut. Life Ins. Co.*, 346 F.3d 830 (8th Cir. 2003) – Affirming summary judgment on all claims in MDL “vanishing premium” market conduct case.
- *Parkhill v. Minn. Mut. Life Ins. Co.*, 286 F.3d 1051 (8th Cir. 2002) – Affirming denial of class certification in MDL litigation alleging numerous claims in connection with sale of alleged vanishing premium policies.
- *Reese v. Aetna Life Ins. & Annuity Co.*, No. 8:00-cv-01343 (M.D. Fla. 2003) – Resolved putative nationwide class action of vanishing premium claims on basis of individual settlement.

Racial Discrimination

- *Thorn v. Jefferson Pilot Life Ins. Co.*, 445 F.3d 311 (4th Cir. 2006) – Affirming district court’s denial of motion for certification of class of owners of 1.4 million industrial life policies.

Credit Cards

- *Bettan v. Am. Bankers Ins. Grp., Inc.*, No. 1:00-cv-01924 (E.D.N.Y. 2000) – Obtained dismissal of complaint alleging national RICO class action and deceptive marketing in connection with sale of credit card insurance.
- *Hernandez v. GE Capital Consumer Card Co.*, Nos. 00-4828 and 01-23566 (S.D. Fla. and Fla. Cir. Ct. 2003) – Defense and settlement of national payment posting class action with 155 million class members against credit card banks.

Executive Life Insurance Programs (§ 412(i)/§ 419)

- *In re Indianapolis Life Ins. Co. I.R.S. § 412(i) Plans Life Ins. Mktg. Litig.*, 581 F. Supp. 2d 1364 (N.D. Tex. 2008) – Successfully petitioned the Judicial Panel on Multidistrict Litigation to establish this MDL proceeding in the U.S. District Court for the Northern District of Texas for claims against Indianapolis Life relating to the design, sale, and marketing of Indianapolis Life insurance policies used to fund employee benefit plans under §§ 412(i) and 419 of the Internal Revenue Code. Subsequently defended numerous actions consolidated in MDL 1983, securing dismissal with prejudice of numerous claims, including RICO, breach of contract, and fraud-based claims.
- *Zarella v. Pacific Life Ins. Co.*, 755 F. Supp. 2d 1218 (S.D. Fla. 2010); 755 F. Supp. 2d 1231 (S.D. Fla. 2010); 809 F. Supp. 2d 1357 (S.D. Fla. 2011) – Putative nationwide class action asserting fraud-based claims against Pacific Life relating to alleged misrepresentations and omissions regarding the validity and future tax consequences of Pacific Life’s insurance policies and plaintiffs’ § 412(i) plan. Defeated plaintiffs’ fraud-based claims on three separate occasions, finally with prejudice on August 22, 2011.

Claims Handling/Payment Practices

- *Hammett v. Am. Bankers Ins. Co. of Fla.*, 203 F.R.D. 690 (S.D. Fla. 2001) – Class certification denied in action by insureds asserting improper claim handling practices.

Modal Premium

- *Berardinelli v. Gen. Am. Life Ins. Co. (In re Gen. Am. Life Ins. Co. Sales Practices Litig.)*, 357 F.3d 800 (8th Cir. 2004) – Successful enforcement of nationwide class action settlement by upholding a district court’s order enjoining the plaintiff’s state modal premium putative class action as barred and released by that settlement.
- *Hurlocker v. MetLife Inv’rs USA Ins. Co.*, No. 1:02-cv-2723 (N.M. Cir. Ct. 2004) – Defense of putative class action alleging modal premium claims successfully resolved on an individual basis.
- *Tropp v. Western-Southern Life Ins. Co.*, 381 F.3d 591 (7th Cir. 2004) – Successful defense of putative class action lawsuit alleging that the modal premium overcharges experienced by the plaintiff were typical of the modal overcharges suffered by the entire class and constituted a violation of an Illinois statutory fraud act.

Premium Rating

- *Voyager Ins. Cos. v. Whitson*, 867 So. 2d 1065 (Ala. 2003) – Decertification of class advancing statutory and common law claims relating to premium rating.

Telephone Consumer Protection Act

- *Green v. Time Ins. Co.*, No. 1:08-cv-00194 (N.D. Ill. 2009) - Obtained voluntary dismissal of TCPA class action.
- *Minniti v. Eilers*, 302 F.R.D. 656 (S.D. Fla. 2014) - Denying motion to certify class action under the TCPA.

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Related Capabilities

RELATED PRACTICES

- Class Actions
- Cost of Insurance and Other Challenges to Non-Guaranteed Element Determinations
- Discrimination
- Employee Benefits, Compensation & ERISA
- Financial Elder Abuse
- Financial Services Regulatory
- Life, Annuity, and Retirement Litigation
- Life, Annuity, and Retirement Solutions
- Litigation and Trials
- Telephone Consumer Protection Act