



Life Insurance Litigation Update

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Court Rejects Annuity Class Action

Robinson & Cole recently obtained summary judgment in favor of Lincoln Benefit Life Company ("Lincoln") in a nationwide class action pending in the Rhode Island Superior Court arising out of Lincoln's administration of one of its annuity products. *DeCesare v. Lincoln Benefit Life*, No. 99-2048, 2002 WL 31867873 (R.I. Super. Ct. Dec. 12, 2002) (Silverstein, J.). The plaintiff class consists of approximately 1100 members from 51 jurisdictions who purchased a particular type of annuity product from Lincoln and whose annuities had anniversary dates in February 1998. In July 2002, the parties filed cross motions for summary judgment on the class claims.

The annuity gives Lincoln the absolute right to set the participation rate and cap each year. The annuity also contains two separate provisions related to this right. The first provision requires that Lincoln "declare" the participation rate and cap annually in advance of an annuitant's anniversary date. The second provision requires that Lincoln send an annual report within 30 days of each anniversary date advising annuitants of the rate and cap for the forthcoming year.

In advance of the class members' February 1998 anniversary dates, Lincoln internally declared the rate and cap for the forthcoming year for those annuitants. A clerical error, however, caused annual reports to be issued containing a different, higher rate and cap. Lincoln promptly discovered

this error and issued revised annual reports to class members.

The plaintiffs alleged that Lincoln breached the express terms of their annuity contracts, as well as the covenant of good faith implied in each contract, when it issued the revised annual reports correcting this error. More specifically, the plaintiffs claimed that the annuity's requirement that the rate and cap be "declared" could only be fulfilled by Lincoln's publication of those terms to annuitants, as opposed to an internal decision by Lincoln setting those terms, as Lincoln argued. Thus, the plaintiffs argued that when the initial (albeit mistaken) report was issued to annuitants, it had the effect of "declaring" or establishing the forthcoming year's rate and cap, regardless of whether the terms set forth in the report were inconsistent with Lincoln's actual decision.

The Court granted summary judgment in favor of Lincoln on all of the class claims. The Court first determined that there was no genuine issue of material fact because resolution of the dispute turned on the interpretation of the term "declare" in the annuity. The Court was not persuaded that Lincoln was required to "declare" the rate and cap to annuitants in order to set those terms for the forthcoming year. Specifically, the Court held that "given the subsequent [annuity] provision detailing the manner in which annuitants would be notified, it would strain logic to impermissible degree to conclude that the [] drafters intended to

insert one veiled requirement concerning notice to annuitants, followed by a second, subsequent and overt requirement as to the same notice." 2002 WL 31867873 at *4. The Court concluded that Lincoln's internal decision setting the rate and cap was sufficient to declare those terms for the forthcoming year.

The Court further concluded that under Nebraska law, which was applied because of an earlier decision in the case, Lincoln was permitted to correct its clerical error. Nebraska law generally permits a party to recover accidental overpayments under a contract that result in unjust enrichment of the receiving party. Under this legal principle, Lincoln would have been able to recover any payments made under the erroneous rate and cap. No such payments were made because the error was immediately corrected. The Court determined that it would be unreasonable to require Lincoln to make overpayments and then initiate litigation to recover them.

This ruling may prove useful in discouraging class actions against insurers that relate to administrative errors in the processing and servicing of insurance and annuity products.

For more information, please contact
Ted Tucci (ttucci@rc.com) or Rhonda Tobin (rtobin@rc.com).



ROBINSON & COLE LLP

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