Individual Indexed Annuities Viewed as Installment Contracts for Statute-of-Limitations Purposes

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In a recent decision by a New Jersey district court partially denying a motion to dismiss, the characterization of individual indexed annuities as installment contracts had a significant impact on the potential liability of the insurer.

In *Angelo v. Fidelity & Guaranty Life Insurance Co.*, the plaintiff invested $120,000 in an annuity with Fidelity's predecessor in 2005, which allocated a portion of the investment to a two-year index option, and another portion to a three-year monthly index option. The plaintiff alleged that he was receiving only one year of interest for each option, rather than interest for each year of the option. The plaintiff sued in state court and asserted claims for breach of contract, unjust enrichment, and consumer fraud. Fidelity removed the action to federal court and subsequently moved to dismiss.

Fidelity argued that the claims were barred by New Jersey's six-year statute of limitations, as the annuity contract was entered into in 2005, and no changes had been made to its terms. Fidelity additionally argued that, if any miscalculations were made, they were made in 2011 when a letter was sent indicating that changes were recorded in connection with the contract. The plaintiff conceded that the six-year statute of limitations applied, but argued that the annuity products were installment contracts, rendering Fidelity liable for some of the alleged interest miscalculations.

The district court determined that the installment-contract approach applied to the annuity contract at issue because it required the payment of interest on a recurring basis. The district court noted that, for installment contracts and contracts including "divisible, installment-type payment requirements," claims begin to run against each installment as it falls due, with a new cause of action arising from the date of each missed payment or underpayment. Because the complaint alleged that Fidelity had failed to pay the interest on a recurring basis, the court held that the obligation was an installment-type payment and that the six-year statute of limitations arose with each alleged underpayment of interest.

The district court then addressed Fidelity's arguments with respect to the claims themselves. The court denied Fidelity's motion to dismiss the breach-of-contract claim, holding that, viewing the facts as the plaintiff had presented them, the complaint adequately stated a claim for breach of contract. The district court noted that the alleged annuity required: (1) the plaintiff to pay his investment, which he did; and (2) Fidelity to pay interest on the annuity options chosen. The court explained that because the complaint alleged that Fidelity failed to pay the proper interest in breach of the annuity contract, it stated a viable breach-of-contract claim.

The district court, however, dismissed the unjust-enrichment claim because an unjust-enrichment claim is not viable when a valid, unrescinded contract governs the rights of the parties. The court noted that because the plaintiff's claim was based on the failure to provide interest under a valid contract, the unjust enrichment claims must fail. The district court likewise dismissed the New Jersey Consumer Fraud Act claim because the complaint simply alleged a breach of contract based on Fidelity's failure to pay the plaintiff his interest on a yearly rate. The district court held that without more there could be no consumer-fraud violation.

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