CARLTON FIELDS

Insurer Victory in IUL Class Action

September 28, 2015

In a highly-anticipated opinion, a federal district court found for the insurer in a California class action involving alleged improprieties in the sale of indexed universal life insurance policies. Plaintiffs alleged that the insurer failed to disclose to the class in *Walker v. Life Ins. Co. of the Southwest* (1) the "volatility defect" of the IUL policies, that the interaction between the policy design and market volatility created a significant risk that the policy would lapse or suffer reduced value, and (2) the "tax defect," that policyholders would be required to pay substantial taxes if they had outstanding loans at the time of surrender. Plaintiffs claimed they were damaged because they would not have purchased the policies or would have paid less for them had they known the allegedly omitted facts. A jury returned a verdict for the insurer after a three-week trial nearly a year ago on the common law fraudulent concealment claims. The California Unfair Competition Law claims were decided by the bench, however, and the court a few months ago issued a favorable 75-page opinion. Among the highlights of the decision were the court's findings that:

- the sales process was not uniform because each agent remained free to decide how to sell the products;
- the insurer had no duty to disclose that returns projected on an illustration might be more or less volatile, where the illustrations complied with state regulation;
- plaintiffs were not likely to be misled where there were significant disclosures on the illustrations regarding the numerical examples;
- plaintiffs suffered no actionable injury for a failure to receive returns above the guaranteed values; and
- plaintiffs could have avoided injury by reading their policies and returning them within the free look period.

Plaintiffs have filed an appeal.

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