Class Action Litigation

Where Do We Go From Here?

Marc Andre Giguere
June 19, 2003
Presentation Contents

- Current Litigation Environment
- New Developments
- Can Companies Avoid Litigation
Current Litigation Environment
Over the last few years, we have seen new types of life insurance class actions

- Race-based premiums
  - Driven by insurance department reviews
  - Shift towards Ordinary products
- Gap premium/effective date
  - Now seeking retroactive relief
- Modal premium
  - Good news ahead?
- Premium tax
  - Based in Florida, but could be applied elsewhere
New Developments
The players and the rules have changed

- New plaintiffs’ firms are getting involved
  - Well known trial lawyers from other industries
  - Small firms that try to copy other cases
- Increased opt-out litigation
  - Varies tremendously based on market
  - Have threatened certain settlements
- Plaintiffs are now shifting towards P/C and health companies
We are seeing a shift in how companies approach class actions

- For many reasons, more companies are now choosing to litigate their cases
  - Opt-outs
  - Cost of settlements
  - Reputation
- For companies that choose to litigate, the best chance may be fighting class certification
- Companies have also raised good arguments regarding the merits of certain cases
New cases for life companies will probably focus on annuities

- Mutual fund expense reimbursements
- New money rate subsidies
- The return of “double deferral”
The latest type of variable annuity class action involves mutual fund expense reimbursements

- Non-proprietary fund managers usually provide expense reimbursements/revenue sharing
- The plaintiffs make the following allegations
  - The company did not disclose the reimbursements
  - The company ignored its fiduciary responsibility and only offered funds that were willing to “pay to play”
  - Mutual fund reimbursements resulted in higher fund management fees charged to contract holders
Companies who fight this type of class action can perform the following analyses

- Compare the reimbursements received to the services provided for the mutual fund
- Compare investment management fees to their corresponding retail mutual funds
- Analyze correlation between fund utilization and reimbursements
- Compare the performance of the funds offered to other similar funds

*In most instances, expenses for mutual funds purchased in a variable annuity are lower than their publicly available counterparts*
Fixed annuity new money subsidization class actions

- Typical allegations
  - Companies inappropriately subsidized new money rates at the expense of old money rates
  - Companies deliberately reduced the credited rates to levels substantially below the rates illustrated at the point of sale once policyholders were “locked-in”

- Good arguments against class certification
- Damages can be measured by comparing the credited interest rates
  - Fixed annuities usually compare favorably to alternative products such as CDs
Double deferral class actions are back

- Typical allegations
  - That it is inappropriate per se to issue annuities in tax deferred plans
  - That annuity fees are excessive and unreasonable
- Many of these cases were thrown out before class certification
- Compare fixed annuities to CDs and variable annuities to loaded mutual funds and mutual fund wrap accounts
Variable annuity analysis

- Variable annuities often have lower net costs than mutual funds issued by other financial institutions
- Variable annuities usually have lower net costs than mutual fund wrap accounts
- There are also non-financial reasons why variable annuities may be better suited for individuals
While there are no guarantees …

- Follow your company’s document retention policy
- Have non-technical people review your marketing and sales training material
- Don’t underestimate the impact on policyholders
- Improve communication with policyholders
- Implement voluntary remediation plans