

Class Action Litigation

Where Do We Go From Here?

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Litigation UPDATE

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*Current Litigation
Environment*

Over the last few years, we have seen new types of life insurance class actions

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- ❖ 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

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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

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- ❖ 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

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- ❖ 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

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- ❖ 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

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Can Companies Avoid Litigation

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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