

July 27, 2009

Class Certification Denied in Fixed Indexed Annuity Interest-Crediting Case

On July 23, 2009, the U.S. District Court for the Southern District of Iowa denied class certification in *Duchardt v. Midland National Life Ins. Co.*, 4:07-cv-00351 (S.D. Iowa July 23, 2009), a putative class action challenging an insurer's interest-crediting practices with regard to fixed indexed annuities (FIAs). (Click [here](#) for the opinion.) The case involved a dispute over interpretation of policy provisions when the date that interest was to be credited fell on a weekend. The court found that Plaintiff could not meet his burden under Fed. R. Civ. P. 23 to establish that class certification was appropriate.

Plaintiff alleged that the insurer incorrectly credited interest on his annuity. The policy at issue guarantees the policyholder a base rate of interest, plus a supplemental, non-guaranteed rate of interest linked to the performance of a stock index. The amount of supplemental interest is calculated either each year or each month on the policyholder's anniversary date. The dispute involved how interest is credited when the anniversary date falls on a weekend.

The policy provides that the Index Value to be used for crediting interest on the anniversary date is "the closing value on the previous trading day." The policy further provides that if the Index Value is not available for a given Index Value date, the Index Value to be used is "the closing value on the previous trading day." The policyholder argued that when the anniversary date falls on a weekend, the Index Value should be credited based on the closing value of the index on the previous Friday. The insurer, however, applied the Index Value of the previous Friday, which would be the closing value on the previous Thursday.

Plaintiff brought a breach of contract claim, arguing that his annuity return would have been \$125.87 higher under his interpretation of the contract. He sought to represent a class of all policyholders who own one of eighteen different types of FIAs. (Twelve of the eighteen FIA policies did not use the phrase "on the previous trading day," but the insurer interpreted the different contract provisions in the same manner.) In addition, Plaintiff proposed to represent a subclass of annuity owners whose contract values were lower due to the alleged misinterpretation of the policy.

The court denied Plaintiff's motion for class certification for a number of reasons. An implicit prerequisite under Rule 23 is that the class "must be adequately defined and clearly ascertainable." With respect to the subclass, the insurer argued that it was not ascertainable without individualized inquiries in order to identify members of the subclass. In order to identify subclass members, the interest of each policy would have to be recalculated to determine if the value was higher under the Plaintiff's proposed interest-crediting method. Plaintiff suggested a method of using a formula and assumptions to identify subclass members without an individualized inquiry, but the court rejected this method as inherently speculative. The court held that the subclass could not be certified because it could not "be ascertained without extensive individualized inquiries."

The court held that the class and subclass met the numerosity and commonality requirements, but did not meet the typicality requirement. The contracts at issue contained different language relevant to the interest-crediting practices of the insurer. Further, the question of contract interpretation is governed by state law, and the law of the state where the policyholder is domiciled is to be applied. The FIAs were sold to individuals in 47 states, necessitating individualized inquiries into interpretation of the policy language. In addition, under the law of many states, the court may look to extrinsic evidence of the subjective understanding of the parties to determine whether the contract language is ambiguous.

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The court also held that:

- The Plaintiff was not an adequate class representative. There was a divergence of interests between the named plaintiff and many of the class members because some policyholders benefited from the insurer's interest-crediting practices.
- The class did not meet the requirements for certification under Rule 23(b)(2), under which a class can be certified where injunctive relief is appropriate for the class as a whole. Because approximately half of the class incurred no injury (and likely benefitted) from the insurer's interpretation of the policy, the class was not cohesive. Further, individualized inquiries under state contract interpretations laws prevented certification under Rule 23(b)(2).
- As to the proposed subclass, Plaintiff could not establish that common questions of law or fact predominate under Rule 23(b)(3). The court held that the Plaintiff could not rely on common evidence to prove the proper interpretation of the policy provision because of the individualized inquiries required under state law. The court also held that a class action was not superior because of the need for individualized inquiries.



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