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## Court Rejects Suit Alleging Fraud and Negligent Design in the Sale of Universal Life Insurance Policies

On September 27, 2010, the U.S. District Court for the Western District of Oklahoma granted summary judgment in favor of the insurance company defendant in a putative class action lawsuit alleging that a Universal Life insurance policy and its accompanying illustrations misrepresented the operation of the policy and that the policy was “negligently designed” so as to ensure that policyholders would not enjoy the cash values or death benefit coverage they expected because the policy was designed to lapse. Click [here](#) for the opinion.

The putative class representative argued that a Universal Life policy offered by New York Life Insurance and Annuity Corporation (New York Life) should not have expired until the maximum “maturity date,” which was defined as the policy anniversary date nearest the policyholder’s 100th birthday. Plaintiff contended that New York Life had the ability to change the charges and interest crediting rate under the policy, and did so with the intent of causing the policies to lapse after the policyholder had paid in premiums over many years but before the policyholder died. In this way, plaintiff contended, the company retained all the premiums paid while the policyholders would be left with no remaining cash value and no death benefit coverage.

Among the unusual arguments the plaintiff advanced was the contention that, on general principles of common law tort liability, the policy illustrations could be held deficient to disclose how the policy operated notwithstanding that the illustrations complied with the Oklahoma regulation on life insurance illustrations, which is based on the National Association of Insurance Commissioners model regulation. Plaintiff’s expert also propounded a theory of “negligent design,” arguing that the policy was not designed to benefit the policyholders but was instead designed to enrich the company and minimize payouts. New York Life argued that the illustrations accompanying the policy amply disclosed how the policy operated, in particular that, in the case of the named plaintiff, based on the current crediting rate and initial planned premium level chosen, the policy would lapse in the seventeenth year if only the scheduled premium was paid. New York Life also argued that there is no recognized cause of action for “negligent design” of an insurance policy and no articulable “standard of care” that could provide the foundation for a new theory of negligent design of insurance policies.

Ultimately, the Court dismissed on summary judgment all the fraud and misrepresentation related claims – fraud, unjust enrichment, and rescission for fraud in the inducement – on statute of limitations grounds because the policy illustrations provided at time of the delivery of the policy in 1999 did in fact communicate that, assuming only the initial planned premium level was paid, the policy would lapse after 17 years. The suit was not filed until 2008, well after all limitations periods expired. With respect to the “negligent design” theory, the Court held that plaintiff’s expert had failed to establish the existence of such a cause of action or a standard of care and, in any event, that the expert’s opinion could not be used to collaterally amend the complaint to add a new theory that had not been alleged in the complaint.

The case is *Blumenthal v. New York Life Insurance and Annuity Corporation*, Case No. CIV-08-456-F (W.D. Okla.) (Friot, J.).

New York Life was represented by Phillip Stano, Ronald Massumi, and Carmen Brun in Sutherland’s Washington, D.C. office.

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*If you have any questions about this development, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

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