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Illustration Disclosures Lead to Dismissal of Universal Life Insurance Class Action

On October 13, 2011, the U.S. Court of Appeals for the Tenth Circuit upheld an Oklahoma District Court's dismissal on summary judgment of a putative class action on behalf of all purchasers of universal life insurance policies issued by New York Life Insurance and Annuity Corporation (NYLIAC). *Blumenthal v. New York Life Insurance and Annuity Corporation*, 2011 WL 4838941 (10th Cir. Oct. 13, 2011).

Sutherland represented NYLIAC before the district court and the Tenth Circuit Court of Appeals. Click [here](#) for the opinion.

The plaintiff, Irving Blumenthal, alleged fraud and misrepresentation in the sale of NYLIAC's universal life policies. Plaintiff's main contention was that the policy's duration of coverage was misrepresented to be either until the death of the policyholder or until the maturity date. The maturity date in a universal life policy represents the theoretical maximum duration of the policy. In the case of the NYLIAC policies, the theoretical maximum duration was defined as the policy year in which the owner would be 100 years old, which in Blumenthal's case would be the year 2032. The *actual* duration of a universal life policy depends in part on the premium level chosen by the purchaser. The purchaser has the option to increase the actual duration, up to the maximum indicated by the maturity date, by increasing the level of premium funding.

Blumenthal purchased his NYLIAC universal life policy in 1999 and received an illustration at the time the policy was delivered. The illustration that NYLIAC provided conformed with the Oklahoma Life Insurance Illustrations Regulation (which adopts the NAIC model regulation on life insurance illustrations). The illustration indicated that at the premium level chosen by Blumenthal at the time of purchase, the actual duration of the policy would be 17 years, under current assumptions regarding interest crediting, cost of insurance and other policy charges. Blumenthal sued, alleging that he had no idea when he purchased the policy that it was not guaranteed to last until his death or 2032, the maturity date. Blumenthal claimed he first learned of the policy's pending "premature" lapse when he received an illustration from NYLIAC in 2006.

In addition to the fraud and misrepresentation allegation, the plaintiff's expert witness proffered additional theories. The expert contended that even if NYLIAC's 1999 illustration fully conformed with the requirements of the Oklahoma Life Insurance Illustrations Regulation, that would not shield the insurer from charges that the nature and duration of the policy were misrepresented by the company. Further, plaintiff's expert contended that NYLIAC could be liable for "negligent design" of the policy, purportedly by designing it to lapse before most policyholders would likely collect death benefits. NYLIAC pointed out that there is no such thing as a cause of action for "negligent design" of an insurance policy, and that in any event, the duration of a universal life policy is based in part on the premium funding decisions that are made by the policyholder.

On NYLIAC's Daubert motion, the district court barred most of the testimony of plaintiff's expert, including the "negligent design" theory, and then turned to the fraud and misrepresentation issues on summary judgment. The court found that the policy disclosures and illustration that Blumenthal received when he bought the policy in 1999 were adequate to put him on notice that the policy would lapse by the 17th year, unless he elected to extend it by paying higher premiums. The policy and the illustration were delivered in June 1999. Therefore, the district court granted summary judgment in favor of NYLIAC on the grounds that all applicable statutes of limitations had long expired by the time Blumenthal's suit was filed.

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Blumenthal appealed to the Tenth Circuit. Although briefing in the Court of Appeals covered a wide array of issues related to the viability of plaintiff's claims and the admissibility of the testimony of plaintiff's expert, the court needed to address only the statutes of limitations issue in order to affirm the dismissal.



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

Authors

Phillip E. Stano	202.383.0261	phillip.stano@sutherland.com
Steuart H. Thomsen	202.383.0166	steuart.thomsen@sutherland.com
Ronald R. Massumi	202.383.0177	rick.massumi@sutherland.com
Carmen L. Brun	202.383.0258	carmen.brun@sutherland.com

Related Attorneys

Frederick R. Bellamy	202.383.0126	fred.bellamy@sutherland.com
Thomas E. Bisset	202.383.0118	thomas.bisset@sutherland.com
Thomas R. Bundy III	202.383.0716	thomas.bundy@sutherland.com
Thomas M. Byrne	404.853.8026	tom.byrne@sutherland.com
Nicholas T. Christakos	202.383.0184	nicholas.christakos@sutherland.com
W. Thomas Conner	202.383.0590	thomas.conner@sutherland.com
Thomas W. Curvin	404.853.8314	tom.curvin@sutherland.com
Clifford E. Kirsch	212.389.5052	clifford.kirsch@sutherland.com
Susan S. Krawczyk	202.383.0197	susan.krawczyk@sutherland.com
Mary Thornton Payne	202.383.0698	mary.payne@sutherland.com
Stephen E. Roth	202.383.0158	steve.roth@sutherland.com
Gail L. Westover	202.383.0353	gail.westover@sutherland.com
Mary Jane Wilson-Bilik	202.383.0660	mj.wilson-bilik@sutherland.com