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No Fraud In Structured Settlement Payments Because of Broker Commissions

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When insurance companies settle cases they often enter into structured settlements where they take a certain amount of money to purchase an annuity to fund the settlement. The annuity then provides the periodic settlement payments to the settling party over time. The principle amount used to purchase an annuity is generally the amount necessary today to sustain periodic payments over an agreed amount of time based on the interest rate provided by the life insurance company issuing the annuity. In other words, the annuity premium payment is the present value of the total number of payments that will be received by the beneficiary of the annuity over time. In a recent case, settling parties sued settling insurers for fraud in a putative class action under RICO because brokers that placed the annuities received a commission from the proceeds used to purchase the annuities.

In *Ezell v. Lexington Insurance Co.*, No. 18-2064 (1st Cir. Jun. 11, 2019), plaintiffs entered into structured settlement agreements with insurers to settle underlying wrongful death and personal injury claims. The structured settlement agreements provided that plaintiffs would receive specified periodic payments from annuities that the insurers would purchase. Years later, plaintiffs brought a putative class action claiming fraudulent misrepresentations about the amounts plaintiffs would receive in settlement. As the court stated, the agreements provided, in part, that $200,000 would be "annuitized" to finance the structured settlement in one case and that the "total present value" of the periodic payments in another case would be $1,642,000. The agreements also specified the exact amount each plaintiff would receive each month, and there is was no dispute that those amounts were received.

Plaintiffs' claim was that they did not receive the $200,000 and $1,642,000 because of the commissions paid to the brokers that placed the annuities. The district court dismissed the claims.

In affirming, Justice David Souter, sitting by designation in the First Circuit, explained that the settlement documents did not promise that plaintiffs would receive $200,000 or $1,642,000. "Rather, they promised only that $200,000 would be 'annuitized' . . . and that the 'total present value' of the periodic payments . . . would be $1,642,000." The court found that there was no dispute that the insurance companies purchased the annuities for the amounts stated. Although the life insurers that sold the annuities used 4% of the sums to pay commissions to the brokers, plaintiffs conceded in their complaint that it was an industry-wide practice to pay brokers these sums. Thus, found the court, the commissions were included in the price of the annuities and plaintiffs failed to provide any basis to infer that the insurers had to inform a settling party of the items of overhead that were standard industry practice.

Moreover, according to the court, the specific schedules in the settlement agreements listed the precise amounts plaintiffs could expect to receive each month throughout the structured settlement period. Thus, held the court, even if there were an ambiguity, it was cured by the schedules. In short, the court concluded that plaintiffs failed to state with particularity the circumstances constituting fraud. In fact, stated the court, the facts pleaded with particularity demonstrated the absence of any circumstances constituting fraud, especially given that there were no allegations that plaintiffs suffered any kind of harm because they received the periodic payments as promised.