THE NATIONAL LAW REVIEW

Lawsuit Alleges Unlawful Insurance Scheme Involving Commission Pooling for the Purpose of Procuring IUL Policies That Intentionally Lapsed After One Year

Wednesday, February 18, 2015

Article By
Insurance Practice Group
Drinker Biddle & Reath LLP
Life Insurance Alert

Insurance Reinsurance & Surety
9th Circuit (incl. bankruptcy)

On February 13, 2015, ***Transamerica Life Insurance Company*** filed a lawsuit in the Central District of California concerning an allegedly unlawful insurance scheme in connection with the sale of indexed universal life insurance ("IUL") policies. The defendants are Madick Insurance Services, LLC; Madick Insurance Group, LLC; Professional Planning Corporation; Kenneth Madick; and Jeffrey Ferretta. The defendants are described as "Independent Producers and Non-Insurance Licensed Persons and Entities," who allegedly formed and ran an enterprise that procured some 154 policies from Transamerica on individuals "who did not need or want the insurance and/or could not afford the insurance, and who had no intent of ever paying premiums for the policies, including both initially and to keep the insurance in effect after one year."

Transamerica alleges that the issuance of the IUL policies pursuant to this scheme was intended to take advantage of the unique commission structure associated with IUL policies. Transamerica specifically alleges that the defendants manufactured the sale of the subject IUL policies for the purpose of "pooling" large amounts of commissions while expecting the lapse of the subject policies one year after issuance. According to the complaint, the defendants advanced and/or funded first-year premium payments to the applicants (i.e., the prospective insureds) for certain of the subject policies. The defendants then utilized the commissions on those policies, including commission overrides, "to pay first year premium on additional IUL policies on behalf of prospective policy owners." Transamerica further alleges that the defendants concealed the true identities of the payors of first-year premiums and that the facts surrounding the funding of premium payments "were fabricated to make the payment[s] appear as if they originated with the applicant."

According to the complaint, nearly all of the IUL policies involved in the scheme have lapsed for failure to pay second-year premiums. Transamerica alleges that "it would not make financial sense for an individual to buy permanent life insurance coverage" such as the subject IUL policies "for only one year." Transamerica also explains that the historical lapse rate of IUL policies supports this conclusion.

Transamerica asserted six causes of action against the defendants, including a civil RICO claim (18 U.S.C. §1962). Transamerica seeks compensatory damages of approximately $5.8 million, which equals the total amount of commission (approximately $12 million) paid to the producer-defendants and their affiliated general agents minus the amount of premiums received by Transmerica. Transamerica also seeks exemplary and punitive damages, as well as attorneys' fees.

Source URL: https://www.natlawreview.com/article/lawsuit-alleges-unlawful-insurance-scheme-involving-commission-pooling-purpose-procu