

Life Insurance & Annuities

Our life insurance and annuity clients depend on us to provide counsel and to litigate issues surrounding their products in federal and state courts across the country. Our group's experience includes, among other things, counseling clients and litigating issues regarding:

Bad faith and other extracontractual claims

Our team regularly litigates cases that include bad faith and other extracontractual claims; we have been handling these kinds of issues since the days when they were unusual to encounter. We know best how to manage preliminary motions, discovery, and trial to eliminate or reduce exposure. We also assist carriers in identifying best practices to reduce exposure.

Brokers and agents

We are particularly experienced in the range of issues and litigation that can arise from agent/broker compensation disputes, improper policy placements, mishandling of client funds, fraud, and other misconduct by producers, be they brokers or agents. We understand and know how to manage the tension that can exist between maintaining relationships with producers and not ending up with liability for their conduct.

Foreign death claims

We frequently assist in investigating and litigating claims arising from foreign deaths.

Foreign nationals

We advise life insurers on the unique issues that can arise from sales of policies to foreign nationals.

Identity fraud

Our practice has broad and deep experience in identifying and combatting the seemingly constantly evolving misuse of identity data (such as social security numbers, birth dates, addresses, and names) to improperly procure policies on lives different than those disclosed in applications. This experience includes the special issues that can be implicated in situations involving groups of policies, applicants, and putative insureds. In addition, our annuity company clients use this experience to identify and recover improper receipt of annuity benefits after deaths of annuitants.

Insurance department investigations and proceedings

We advise life insurance and annuity companies on responses to the range of issues that might be raised by or with a regulator — everything from fraud reporting, to responses to policyholder complaints, to agent/broker issues, and many other similar issues.

Lapses

We are thoroughly familiar with statutory requirements, and often advise clients on proper lapse procedures, including the impact of coverage protection guarantees, in the settings of individual policy issues. We also provide this assistance on a product-wide basis. Finally, we have litigated lapse issues for decades.

Material misrepresentations

We counsel life insurance carriers on claims arising from misrepresentations about age, health, financial, and other material matters, including the frequently sensitive management of contestable



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claim investigations. When necessary, we litigate claims concerning such misrepresentations to successful conclusions.

Payment issues

We regularly counsel clients on payment and beneficiary issues. If necessary, we file interpleader actions on behalf of life insurance carriers and are routinely awarded attorneys' fees in such matters.

Policy values and premium changes

For decades, we have been on the front line in defending life insurers in cases arising out of changes in premium rates and policy values. Although these cases, like most others, are usually resolved before verdict or judgment, we have a strong record of winning those that cannot or will not settle.

Prompt payment statutes

We are experienced in the gamut of these issues, ranging from applicability of such statutes, to their impact upon claims procedures and particular claims, to litigation of issues implicating prompt payment requirements.

Stranger-Originated Life Insurance (STOLI) and other secondary market issues

When it comes to this critical sort of litigation, we wrote the book on it — and we are still doing so. The first STOLI case to go to verdict was tried — and won — by a member of our team. The now established rule that a life insurer who is the victim of application fraud may void the policy and, under certain circumstances, retain the premium was also set in a case handled by one of our lawyers. In recent years, we have continued to make the law in cases establishing the lack of an insurable interest in policies manufactured by prominent “programs.” We have also been at the forefront in establishing the right of carriers to challenge the validity of STOLI policies after the expiration of the contestability period. The STOLI and secondary market experience of our practice is separately profiled further below.

Suspicious deaths

We are regularly hired to assist life insurers around the country in reacting to (and sometimes litigating) death claims that raise questions such as the role of an imposter; missing persons and similar insufficiency of proof of death; suicides; and Slayer's Acts.

Structured Settlements

The lawyers in our group have been especially focused on structured settlement issues, and this has been the case for many years. We have successfully and efficiently litigated factoring cases in state and federal courts all across the country. After the enactment of Section 5891, we implemented new strategies for handling the increased volume of structured settlement factoring transactions. For several clients, we also developed programs that offer payees the possibility of commuting their structured settlements.

We have been active in the National Structured Settlements Trade Association (NSSTA) for more than 20 years. A number of our lawyers have served as co-chairs of the NSSTA Legal Committee, and we speak at virtually every NSSTA meeting.

Although the litigation landscape for factoring transactions has changed over the years, when factoring transactions violate the applicable Structured Settlement Protection Acts (SSPA's), we oppose these transactions on behalf of our annuity owner and issuer clients. We also routinely assist clients with all of the various disputes and issues that arise from the thousands of structured

settlement annuities that our clients own and/or issue. These include issues relating to special needs trusts, estates, contingent beneficiaries, underpayments, overpayments, insurer insolvencies, minors, accelerations, commutations, tax planning, and tax disputes.

Stranger-Originated Life Insurance

Our group is especially focused on the life insurance secondary market, and in particular, on the related problems associated with STOLI. We have been counseling clients on these issues, and litigating these cases, for more than 10 years. Recently, we successfully litigated numerous STOLI death claims including the following matters:

- *Sun Life v. U.S. Bank (Malkin)*: The Southern District of Florida ruled that no death claim proceeds were owed on a \$5 million policy that was found to be an illegal human life wager under Delaware law. Affirmed by the Eleventh Circuit in June 2017.
- *U.S. Bank v. Sun Life (Van de Wetering)*: The Eastern District of New York ruled that no death claim proceeds were owed on a \$10 million policy that was found to be an illegal human life wager under Delaware law. This case was settled in 2018 while on appeal.
- *Sun Life v. Conestoga Tr. Servs. (Collins)*: The District of Tennessee concluded that this policy was created and financed by investors, that the \$2 million policy was invalid, and that no death claim proceeds were owed. Affirmed by the Sixth Circuit in April 2018.
- *Sun Life v. Wells Fargo Bank (Bergman)*: The District of New Jersey ruled that this \$5 million policy on the life of a New York resident was originated and paid for by stranger-investors. Based on these facts, the court found the policy to be a void human life wager, and no death claims proceeds were owed. Currently on appeal.

The STOLI market is in constant motion, and the lawyers in our group keep our clients up to speed on these issues. We track existing litigation, and we also monitor the various publications that report on these issues. Over the years, we have collected a great deal of knowledge on this market and its participants and tendencies.

Other Insurance, Life Insurance, and Annuity Experience

The lawyers in the Cozen O'Connor Life Insurance and Annuities Group produce successful results with respect to products and case types that span the entire spectrum of the industry. The financial exposures presented by the cases, issues, and products we have managed have ranged from eight-figures down to small face amounts.

We have a proven track record of successfully defending insurer and annuity issuer clients in class actions. These cases arise in the context of all of our various areas of experience. We analyze these cases early looking for the most effective and efficient exits — often proving that these cases should be dismissed at their early stages.

Many of the lawyers in our insurance group have experience with complex RICO cases. Indeed, because we know both insurance and RICO issues so well, we are especially well-suited to assist our insurer clients in these matters. For example, in *Luzerne County Retirement Board v. Makowski, et al.*, we obtained summary judgment for an insurer client on a \$45 million RICO claim in the Middle District of Pennsylvania.

We also routinely engage with numerous state insurance regulators and state guaranty associations concerning life and annuity issues.

For a number of clients, the lawyers in our group have designed internal policies, protocols, and procedures — including for underwriting, policy administration, and claims handling — that are designed to avoid litigation.

Finally, for many years, we have been recognized by our insurer clients for identifying new developments and exposures in the insurance industry. We devote large amounts of time and energy to making presentations, hosting seminars, and issuing publications on such issues of interest to the insurance industry. Our lawyers have developed numerous white papers and multi-state surveys on important life insurance and annuity issues.

Experience

Secured a unanimous ruling from the Supreme Court of the State of New Jersey that stranger-originated life insurance policies are void from inception under New Jersey law. In this case, the policy at issue was purchased by an individual with an insurable interest in the insured's life, but ownership was quickly transferred to strangers as per a prior agreement. The matter came to the state high court via certified questions from the U.S. Court of Appeals for the Third Circuit.

Won summary judgment in a case of first impression in which the court held that a two-year suicide exclusion in a life insurance policy approved under the Interstate Insurance Product Regulation Compact (IIPRC) was enforceable. In securing this win, the team overcame the beneficiary's arguments that the IIPRC's delegation of authority to the Interstate Insurance Product Regulation Commission to adopt standards governing the content of covered policies that would supersede any conflicting state statute was an impermissible delegation of legislative authority under the Colorado Constitution, that the IIPRC violated the state constitution's equal protection and freedom from special legislation provisions, and that requisite notice was not given before the two-year suicide exclusion standard was adopted. This was the first case in which a federal court construed the IIPRC and directly addressed whether an interstate compact that is not congressionally approved may delegate authority to an interstate body to promulgate regulations that trump conflicting state law.

In a case of first impression under Tennessee law, lawyers in our Life Insurance and Annuities Group secured a ruling on summary judgment that our client did not have to pay a death claim on a \$2 million life insurance policy to a secondary market investor that was originated via a stranger-originated life insurance scheme. This result was affirmed by the U.S. Court of Appeals for the Sixth Circuit, and the U.S. Supreme Court denied the plaintiff's petition for certiorari.