

## Federal Court Upholds Policy Approved Under the Interstate Insurance Compact

In a case of first impression, the U.S. District Court for the District of Colorado this week upheld the enforceability of a two-year suicide exclusion provision contained in a policy approved under the Interstate Insurance Product Regulation Compact (the IIPRC).<sup>1</sup> The policy's two-year suicide exclusion was permitted by standards adopted by the Interstate Insurance Product Regulation Commission (the Commission) but was inconsistent with another Colorado statute, Colo. Rev. Stat. § 10-7-109, that limited such exclusions to one year.

The decision was entered in a declaratory judgment action filed by Amica Life Insurance Company after the insured committed suicide within 14 months of the policy's issuance.<sup>2</sup> The beneficiary argued that the IIPRC's delegation of authority to the 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. The beneficiary further asserted that the IIPRC violated the state constitution's equal protection and freedom from special legislation provisions, and that the Commission failed to provide the requisite notice in adopting the two-year suicide exclusion standard.

The court initially granted partial summary judgment in favor of Amica, holding that no genuine issues of material fact were presented as to the Commission's adoption of the regulation and that the two-year standard did not violate the equal protection and freedom from special legislation clauses of the Colorado Constitution. However, the court certified to the Colorado Supreme Court the question whether, under the Colorado Constitution, the Colorado Legislature could empower the Commission to promulgate the two-year suicide exclusion standard and provide for it to supersede Colorado's conflicting one-year suicide exclusion statute.

After the Colorado Supreme Court declined to accept the certified question, the District Court allowed supplemental briefing from the parties as well as *amicus* briefs from the National Association of Insurance Commissioners and the Commission and ordered further limited briefing on specified matters.

In its October 19 opinion, the District Court continued to frame the issue as primarily a question whether the Colorado Constitution permits the Colorado Legislature to delegate authority to a state agency to promulgate a regulation that modifies a state statute. According to the court, none of the other cases involving interstate compacts, most of which receive congressional approval and therefore take precedence over conflicting state law under the Supremacy Clause, directly addressed the question presented here.

The court concluded that "to its surprise" the Colorado Constitution permits such a delegation of power, as Amica had argued in its briefing. Reasoning that since the Colorado Legislature could properly delegate such authority to a state agency, there was no reason it could not delegate the same to an interstate body. The court further held that the IIPRC withstood scrutiny under the prevailing Colorado test for determining the constitutionality of delegations of power enunciated in *Cottrell v. City & Cnty. of Denver*, 636 P.2d 703 (Colo. 1981).

The District Court's decision is significant because it is the first one to construe the IIPRC and to directly address the question whether an interstate compact that is not congressionally approved may delegate authority to an interstate body to promulgate regulations that trump conflicting law in the compact states. Amica was represented by Michael J. Miller, Lisa D. Stern, and Alex H. Hayden of Cozen O'Connor.



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**Cozen O'Connor's Life Insurance & Annuities attorneys are available to provide counsel and guidance on the issues discussed in this Alert.**

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<sup>1</sup> The IIPRC was enacted in Colorado, Colo. Rev. Stat. § 24-6-3001, and as of October 2018, every other state except California, Delaware, Florida, New York, North Dakota, and South Dakota.

<sup>2</sup> The case is *Amica Life Ins. Co. v. Wertz*, Civil Action No. 1:15-cv-01161-WJM-SKC (D. Colo. Oct. 19, 2018). A copy of the decision is available [here](#).