manatt

May 4, 2009

INSURANCE LAW @MANATT
NEWSLETTER OF THE INSURANCE LAW PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

California Supreme Court Rules That Life Insurance Does Not Qualify as a "Service" Under the Consumers Legal Remedies Act

Diana N. Iketani

The California Supreme Court has determined that life insurance is not a "service" under the Consumers Legal Remedies Act ("CLRA"). The Court held that statutory language in the CLRA is unambiguous and that the Legislature's omission of insurance under the definition of "service" indicated its lack of intent to subject life insurance to the CLRA.

In November 2003, plaintiffs Pauline Fairbanks and Michael Cobb ("Plaintiffs"), sued Farmers Group, Inc. and Farmers New World Life Insurance Company (collectively, "Farmers"), alleging that Farmers engaged in various deceptive and unfair practices in the marketing and administration of its universal life insurance and flexible premium universal life insurance policies to California residents who purchased Farmers policies between November 3, 1984, and December 31, 1996.

The causes of action included a claim for violation of the CLRA. As to that claim, the trial court granted Farmers' motion for judgment on the pleadings on the ground that the CLRA did not apply because the life insurance policies in question were neither "goods" nor "services" under the Act. Plaintiffs sought review of the trial court's ruling by petitioning the Court of Appeal for a writ of mandate. After issuing an order to show cause, the Court of Appeal denied Plaintiffs' petition, concluding, like the trial court, that life insurance is not subject to the protections of the CLRA. The California Supreme Court granted Plaintiffs' petition for review.

NEWSLETTER EDITORS

Carlos E. Needham
Partner
cneedham@manatt.com
310.312.4193

Amy B. Briggs
Partner
abriggs@manatt.com
415.291.7451

Jeremiah P. Sheehan
Counsel
jsheehan@manatt.com
212.830.7205

OUR PRACTICE

Manatt's insurance practice group is multi-faceted. Our insurance regulatory lawyers represent insurers, producers and related parties in connection with examinations and investigations by state insurance departments, insurer mergers and acquisitions, ... more

. Practice Group Overview
. Practice Group Members

INFO & RESOURCES

. Subscribe
. Unsubscribe
. Sarbanes-Oxley Act
. Newsletter Disclaimer
. Technical Support
. Manatt.com

The CLRA (California Civil Code § 1750 et seq.) was enacted in 1970 and prohibits specified unfair and deceptive acts and practices in a "transaction intended to result or which results in the sale or lease of goods or services to any consumer." "Goods" are defined as "tangible chattels bought or leased for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for these goods, and including goods that, at the time of the sale or subsequently, are to be so affixed to real property as to become a part of real property, whether or not severable from the real property." "Services" are defined as "work, labor, and services for other than a commercial or business use, including services furnished in connection with the sale or repair of goods."

The issue of whether insurance is a "good" or a "service" under the CLRA was not expressly addressed in prior California cases. The Supreme Court had stated in dicta that "insurance is technically neither a 'good' nor a 'service' within the meaning of the [Consumers Legal Remedies Act]," and federal district courts in California had relied on this statement in concluding that annuities (which are included within the Insurance Code's definition of life insurance) are not goods or services subject to regulation under the CLRA.

Yet none of the prior cases examined the specific issue of whether life insurance fell under the CLRA's definitions of goods or services. Life insurance, as a contract of indemnity, did not seem to qualify under either definition. The Supreme Court quickly determined that life insurance was not a "tangible chattel" and therefore could not be a "good" under the CLRA definition. It also determined that life insurance was not a "service" because an insurer's contractual obligation to pay money under a life insurance policy is not work or labor, nor is it related to the sale or repair of a tangible chattel. As a result, the Supreme Court affirmed the Court of Appeal's ruling that the life insurance policies at issue in this case were not services as defined in the CLRA.

Because it found the statutory language to be unambiguous, the Supreme Court was not obligated to consider legislative history; however, it did so in an abundance of caution. In evaluating the national model law from which the CLRA was derived, the Supreme Court noted that the model law expressly applied to insurance by including insurance in the definition of "services," yet the California Legislature omitted the reference to insurance in the definition of "services" within the CLRA. By

this intentional omission, the Supreme Court determined that the Legislature indicated its intent *not* to treat insurance as a service under the CLRA.

As further support, the Supreme Court also analyzed differences between the CLRA and other California statutes, as well as statutes from other states, finding that there was no basis to go beyond the plain meaning of the CLRA's delineation of "goods" and "services." California's Unruh Act differs from the CLRA because it contained a definition of "services" that expressly included services furnished "in connection with . . . the providing of insurance." Texas cases proffered by the Plaintiffs failed because they hinged not upon the Texas analogy to the CLRA, which contained a nearly identical definition of "services" as in the CLRA, but instead on other provisions of Texas's Deceptive Trade Practices-Consumer Protection Act, which expressly incorporated actions brought under the Texas Insurance Code. Likewise distinguishable was the Colorado case holding that insurance was subject to regulation under the Colorado Consumer Protection Act. In that case, the Colorado high court noted that the Colorado statute regulated goods, services, and property, where "goods" and "services" were not defined, but the definition of "property" included "intangible property" like insurance.

The broader application of this decision to CLRA cases was evident in the Court's analysis of Plaintiffs' final argument that even if life insurance policies themselves are not services as defined in the CLRA, they should nevertheless be considered services because of the "work or labor of insurance agents and other insurance company employees in helping consumers select policies that meet their needs." The Court determined that similar ancillary services are provided by the sellers of virtually all intangible goods (such as investment securities, bank deposit accounts, and loans), and the sellers of virtually all these intangible items assist prospective customers in selecting products that suit their needs. Extending the application of the CLRA to all such ancillary services would defeat the legislative intent in limiting the definition of goods to include only "tangible chattels," and thus, the Court concluded that the ancillary services that insurers provide to actual and prospective purchasers of life insurance do not bring the policies within the scope of the CLRA.

Read the full text of the opinion here.

back to top

FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:

Diana N. Iketani Ms. Iketani's litigation practice focuses on complex commercial litigation. She has litigated matters for clients in entertainment, banking, real estate, insurance, healthcare and other industries. Ms. Iketani has represented clients in contract, insurance and tort-related actions, including entertainment litigation, unfair competition, franchise agreement disputes, real estate and easement disputes, product liability and toxic torts. She is actively involved in all phases of litigation, from pre-litigation counseling through trial and appeal.