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LEGAL ALERT

March 20, 2013

Retained Asset Account Litigation—Summary Judgment Entered for MetLife

***Keife v. Metropolitan Life Insurance Company*, No. 3:10-cv-0546-LRH-VPC, and *Simon v. Metropolitan Life Insurance Company*, No. 3:10-cv-0916-LRH-VPC**

On March 8, 2013, the U.S. District Court for the District of Nevada, Judge Larry R. Hicks presiding, granted the defendant-insurer's motions for summary judgment in the consolidated, putative class actions, *Keife v. Metropolitan Life Insurance Company*, No. 3:10-cv-0546-LRH-VPC, and *Simon v. Metropolitan Life Insurance Company*, No. 3:10-cv-0916-LRH-VPC. (Please click here for the opinion.) Sutherland was MetLife's trial counsel in the consolidated cases.

Plaintiffs were beneficiaries under the Federal Employees' Group Life Insurance (FEGLI) Policy, pursuant to which MetLife provided life insurance to civilian employees of the federal government. Plaintiffs alleged that, by establishing retained asset accounts (called Total Control Accounts) to pay life insurance proceeds to beneficiaries and investing the funds backing those accounts in its general account, MetLife breached the FEGLI Policy's requirement that MetLife make "payment" to beneficiaries "immediately" and in "one sum." Plaintiffs argued that MetLife was required to issue beneficiaries a single check for the total amount of their life insurance proceeds. MetLife countered that it satisfied the FEGLI Policy's requirement to make "payment" of life insurance proceeds "immediately" and in "one sum" when it established an interest-bearing account in the beneficiary's name, credited the account with the entire amount of life insurance proceeds (and interest) owed to the beneficiary, and provided the beneficiary with a "checkbook" to draw on the account up to the full balance at any time.

Judge Hicks held that MetLife did not breach the FEGLI Policy. First, the court held that the FEGLI Policy did not define "payment" and was ambiguous. The court, therefore, construed "payment" in accordance with the intent of the parties, noting that the federal government authorized and accepted MetLife's payment of life insurance proceeds through Total Control Accounts for more than 20 years.
The court rejected Plaintiffs' argument, based on *Mogel v. UNUM Life Insurance Co.*, 547 F.3d 23, 26 (1st Cir. 2008), that MetLife could not have made "payment" because FEGLI beneficiaries did not have possession and control of funds credited to accounts that were backed by funds in MetLife's general account. The court noted that *Mogel* was not applicable outside the context of ERISA and the policy language at issue in *Mogel* contained limiting language not present in the FEGLI Policy. The court further found that the undisputed evidence established that Plaintiffs had access to and control over the money in their Total Control Accounts through writing checks on the accounts and consciously choosing when and how much money to withdraw. After determining that crediting a Total Control Account constituted "payment," the court found that the payment was "immediate" and in "one sum" because MetLife opened Plaintiffs' Total Control Accounts within days of receiving their claim forms, and payment was made during this one transaction, not in installments.

The court also adopted MetLife's alternative arguments. The court held that, even assuming *arguendo,* that crediting a Total Control Account did not constitute "immediate" "payment" in "one sum," it fell within the FEGLI Policy's provision allowing alternative modes of settlement.

The court also held that Plaintiffs could not establish that they were entitled to damages. Plaintiffs argued that they were entitled to delayed settlement interest from the date of death of the insured until Plaintiffs closed their Total Control Accounts because they were never paid under the terms of the FEGLI Policy. In addition to repeating that Plaintiffs *were* paid under the terms of the FEGLI Policy and therefore were not damaged, the court noted that the delayed settlement interest provision was inapplicable to Plaintiffs' situation because the provision was meant to compensate beneficiaries for delayed access to their benefits and was not intended to function as a liquidated damages remedy for breach of contract.

Judgment was entered in the cases on March 13, 2013. The deadline for any appeal to the U.S. Court of Appeals for the Ninth Circuit is April 12, 2013.

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