

SEPTEMBER 2013

The Bainbridge Law Firm is a business litigation and counseling boutique that focuses on providing results oriented legal representation that protects client resources. We have significant experience in litigating a wide variety of financial services and insurance matters including *Life and Disability Insurance, Property & Casualty Insurance, Bad Faith, Fraud, Annuities, STOLI and Life Settlement matters.*

For more information, kindly contact:

James S. Bainbridge, Esq
(484) 690-4542
jsb@thebainbridgelawfirm.com



© 2013 The Bainbridge Law Firm LLC.
All rights reserved.

This communication is intended to inform our clients and friends of developments in the law and to provide information of general interest. It is not intended to constitute advice regarding any client's specific legal problems and should not be relied upon as such.

Who: *In Re Conseco Life Insurance Co. Life Trend Insurance Marketing and Sales Practice Litigation*

What: Last month, a California Federal Court preliminarily approved a settlement that will resolve the above-referenced class action brought by a class of policy holders against Conseco alleging that Conseco breached the terms of certain insurance policies when it unilaterally raised the monthly cost of insurance and expense charges on the policies. The settlement comes on the heels of a recent ruling in the case partially granting summary judgment in favor of the plaintiffs.

Plaintiffs' motion argued, *inter alia*, that Conseco's arbitrary use of factors not specified in the policies to raise the cost of insurance and expense charges, in the face of declining mortality rates, breached the terms of the policies. In their motion, plaintiffs specifically attacked both (1) the manner in which Conseco imposed the COI and expense charges and (2) Conseco's motives for restructuring the rates, i.e. why it imposed the increased charges.

In addressing the manner in which the new charges were imposed, the Court granted the plaintiffs' motion by ruling that the company's use of duration (how long a customer owned the policy) in calculating COI and expenses charges violated the terms of the agreement because the policies did not explicitly permit the use of this factor in calculating the new charges.

In ruling upon the question of Conseco's motives, the Court ruled that there were triable issues of fact as to whether Conseco's increased COI charges were "wholly divorced from mortality rates" and "whether Conseco increased COI charges to offset lost revenues" and "to recoup investment losses". The Court ruled that there was a factual dispute regarding whether the increased COI charges were an effort to "pass Conseco's prior bad fortunes onto its customers" and ruled that this issue would be left for trial.

While the proposed settlement will vacate the ruling, the decision still serves as a warning to carriers about how they address future increases in COI and expense charges on underperforming policies and provides a road map for navigating COI litigation in the future.

When: January 29, 2013

Where: U.S. District Court, Northern District of California