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## Insurance

### **Class Suit Over Annuity CAFA Removable; Company Internal Affairs Not Implicated**

BY KIMBERLY ROBINSON

**A** state class action relating to the method for calculating dividend payments due under an annuity contract does not involve matters of a corporation's internal affairs and so is removable to federal court under the Class Action Fairness Act, the U.S. Court of Appeals for the Seventh Circuit held Nov. 28 (*LaPlant v. Northwestern Mutual*, 7th Cir., No. 12-3264, 11/28/12).

The federal district court below took the opposite view, finding that the internal-affairs doctrine embodied in CAFA applied and required that the state court retain jurisdiction over the class action. The court's opinion, written by Chief Judge Frank H. Easterbrook, vacated that decision.

Adam L. Hoeflich, Bartlit, Beck, Herman, Palenchar & Scott LLP, Chicago, who represented the defendant, told BNA Nov. 30 that CAFA was enacted just for this sort of case, and that "the Court of Appeals reached precisely the right decision."

David Boies, Boies, Schiller & Flexner, Armonk, N.Y., who represented the plaintiffs, could not be reached for comment.

**Litigation in State Court.** The annuity contract at issue in this case was sold by Northwestern Mutual Life Insurance Company to 36,000 people. Less than 10 percent of annuitants were located in Wisconsin, where Northwestern Mutual is incorporated and headquartered.

In 1985, Northwestern Mutual changed the way it calculated dividends due under the annuity contract.

In 2001, a class action was filed in Wisconsin state court. The complaint alleged that the amended method violated the terms of the annuity contracts and sought damages.

The state court refused to certify a national class comprised of all the annuitants for two reasons.

First, it found that certification was inappropriate because the damages claim was an individual issue, rather than a class one. Second, the court determined that the class was not manageable because nearly half of the annuity contracts included choice of law provisions that required application of another state's law.

That decision was affirmed by a state appellate court.

As a result, plaintiffs filed the current class action in Wisconsin state court. This class was limited to Wiscon-

sin annuitants, and, rather than seeking damages, sought a declaration that the amended method violated the annuity contract.

According to the Seventh Circuit, after certifying the class, the state court issued "a sweeping decision declaring that Northwestern Mutual violated the annuity contracts, breached its fiduciary duties, and should pay substantial compensatory and punitive damages."

Based on the favorable decision, the Wisconsin annuitants amended their complaint, adding a claim for damages for all annuitants nationally.

Northwestern Mutual asserted that the amended complaint now fell under CAFA, and permitted removal to federal court.

The annuitants fought the removal by arguing that 28 U.S.C. § 1453(d)(2) prevented federal jurisdiction.

Section 1453(d)(2) makes CAFA inapplicable to class actions involving a corporation's internal affairs. Specifically, it states that removal is unavailable where the action "solely" involves "a claim that relates to the internal affairs or governance of a corporation . . . and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized."

This section parallels the internal-affairs doctrine, which the court said is "a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands.' "

**Federal Courts Weigh In.** The federal district court agreed with the annuitants that this case involved the company's internal affairs because, as a mutual insurer, Northwestern Mutual's policyholders—including the annuitants—had an ownership interest in the company.

The district court also found that the choice of law provisions in the annuity contracts were invalid and that Wisconsin law applied nationally to all the annuity contracts. Therefore, the district court held that Section 1453(d)(2) applied, and bounced the class action back to state court.

The Seventh Circuit disagreed.

It acknowledged that the annuitants had an ownership interest in Northwestern Mutual by virtue of the annuity contracts. However, the court likened their claims to those of corporate bondholders.

These bondholders also have an ownership interest in the corporation, but "disputes between corporations and their creditors regularly are resolved under the law of contract; they are not thought of as disputes about internal corporate affairs," the court said.

The court noted that the complaint and the state courts' rulings relied on insurance and marketing laws, not on Wisconsin corporate law. "That pretty much shows that this dispute does not concern the internal affairs of a Wisconsin corporation," and, therefore, makes Section 1453(d)(2) inapplicable.

Additionally, the Seventh Circuit found that the annuity contracts' choice of law provision were valid, contrary to the district court's finding.

The appellate court said that the district court's determination led to the "startling proposition" that all choice of law provisions were invalid in Wisconsin. Moreover, citing the *Erie* doctrine, the court said that it was inclined to agree instead with the state courts, which both determined that the choice of law provisions were valid.

As a result, the amended class action claims did not arise solely under Wisconsin law, and, therefore, Section 1453(d)(3) did not apply.

Possibly signaling its disagreement with the state courts' decisions regarding the merits of the class action, the Seventh Circuit said that on remand the district court was free to consider not only whether the

amended complaint was proper, but it was also free to reconsider the state courts' finding that the annuity contracts were violated.

What if the federal district court agrees with the state courts? The Seventh Circuit made it clear that the district court was free to revisit the merits on appeal.

**Effectuating CAFA's Purpose.** CAFA was enacted in 2005 to stem abuses of the class action device by, among other things, expanding federal jurisdiction over class actions involving claims of \$5 million or more.

Noting that the plaintiffs in this case had filed similar suits in Florida, California, and Washington, Hoeflich said that "the Class Action Fairness Act was designed exactly for this situation."

He said that it is "increasingly important that cases of this nature stay in federal court to effectuate Congress's intent." Otherwise, "the Class Action Fairness Act will be undermined if creative maneuvers can be used to end run federal jurisdiction."

Judges Joel M. Flaum and Diane S. Sykes joined the opinion.

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Full text at <http://pub.bna.com/lw/123264sev.pdf>.