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Insurers Prevail on Partial Motion to Dismiss in Cost of Insurance Class Action

Dickman v. Banner Life Ins. Co., et al., Case No. WMN-16-192, pending in the United States District Court for the District of Maryland, is one of a number of currently active purported class action lawsuits alleging that defendant life insurers have improperly raised cost of insurance rates. The *Dickman* case was filed in January 2016 against Banner Life and its parent companies, Legal & General America, Inc. and Legal & General Group PLC. On December 21, 2016, the District Court of Maryland dismissed *all* of the claims that had been brought against the parent companies; dismissed plaintiffs' conversion and unjust enrichment claims against Banner Life; and significantly limited the remaining tort claim against Banner Life.

The Banner Life parent companies were sued on the basis of an alleged captive reinsurance arrangement that was allegedly providing them with undue profits while at the same time allegedly leading Banner Life to recoup revenue through a cost of insurance rate increase. The court examined these allegations and, accepting them as true for purposes of the defendants' motion, determined that no plausible breach of contract cause of action could be stated against either of the parent companies. According to the court, plaintiffs had a contract with Banner Life, and not with either of its parents, and it is a well-settled principle of corporate law that parent companies are not directly liable for the actions of their subsidiaries. With respect to plaintiffs' conversion claims, the court agreed with the defendants that money is generally not subject to a claim of conversion and that the narrow exception to this rule under Maryland law was inapplicable. With respect to plaintiffs' unjust enrichment claims, the court confirmed the general rule that such claims will not stand where the subject matter sued upon is governed by an express contract.

Finally, with respect to plaintiffs' fraud claims, the court dismissed the parent companies, holding that "there are insufficient allegations regarding any fraudulent statements

of [the parent companies] to satisfy Rule 9(b)." Although the court permitted plaintiffs to proceed with a fraud claim against Banner Life, it expressly limited the scope of that claim – explaining that plaintiffs' could only argue that "they reasonably relied on [Banner Life's annual financial disclosures] and continued to make excess premium payments for which they ultimately received no benefit and thus were damaged." The court then stated, in a footnote, that plaintiffs' fraud allegations against Banner Life "while sufficient at this stage of the litigation ... may prove difficult to establish on summary judgment or at trial."

The court's decision significantly circumscribes the scope of this case. Two defendants were dismissed in their entirety, creating precedent that may dissuade future plaintiffs from naming parent companies in these types of lawsuits. In addition, the decision demonstrates that the general rules precluding conversion claims for money and precluding unjust enrichment claims when the parties are in privity apply also in the context of cost of insurance claims.

With these dismissed claims out of the case, Banner Life can now focus on the breach of contract claim (which has yet to be tested by Banner Life or addressed by the court) and the significantly limited fraud claim. Indeed, on the fraud claim, the court seemed to forecast that Banner Life will have a realistic chance at obtaining judgment as a matter of law at a later stage of the case.

The life insurance industry has been presented with numerous lawsuits in recent months on cost of insurance rates. Drinker Biddle tracks and analyzes these cases on an ongoing basis, advises numerous clients on these issues, and is defending Banner Life and its parent companies in the *Dickman* matter.

If you would like to discuss any of these issues or matters in greater detail, please reach out to your Drinker Biddle contact.

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