

Judge kills Pru motion to toss death benefit suits

Carrier being sued for allegedly retaining life insurance payouts, pocketing the float

By Darla Mercado

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A Massachusetts federal court judge has quashed a motion by Prudential Insurance Co. of America to dismiss a lawsuit alleging that the insurer had wrongfully held on to veterans' death benefits instead of paying them out in a lump sum.

Judge Michael A. Ponsor of the U.S. District Court for the District of Massachusetts on Thursday decided that a lawsuit filed last January that included a slate of claims against Prudential — including claims of fraud, unjust enrichment, breach of contract and breach of fiduciary duty — could proceed.

The case, which consolidates four suits, goes back to a change in practices on the part of Prudential and its relationship with Department of Veterans Affairs in providing life insurance coverage to service members. Insureds or their beneficiaries could elect to have death benefits distributed either in a lump sum or in 36 equal monthly installments.

Total damages claimed by litigants in the case are expected to be in excess of \$850 million, said Michael von Loewenfeldt, an attorney with Kerr Wagstaffe LLP who is representing the plaintiffs.

The plaintiffs allege that the insurer changed its payment practice in 1999. After that change, they say, beneficiaries no longer received a lump sum check after the death of a policyholder. Instead, they received a draft book for the amount in an Alliance Account, an interest-bearing retained-asset account. Meanwhile, Prudential allegedly placed the funds in its general account and generated 5% to 6% returns while crediting beneficiaries a 0.5% to 1.5% interest rate in the Alliance account, according to the complaint.

Attempting to dismiss the complaint, Prudential had argued that there was no distinction between paying a lump sum in one check or placing the proceeds in an Alliance Account, according to court documents.

In his decision, Judge Ponsor cited a previous case in which a court had determined that the delivery of a checkbook did not constitute a lump-sum payment. "A lump-sum payment by check (which actually transfers the funds to the beneficiary) is simply not the same as a

lump-sum payment by checkbook (which allows the insurance company to retain the funds and earn interest on them)," he wrote in his decision.

Also, while Prudential asserted that the plaintiffs had alleged no damages, Judge Ponsor ruled that this was unfounded and that the plaintiffs had sought restitution of the interest they claim Prudential had wrongfully withheld from them.

"We're obviously very pleased," said Mr. von Loewenfeldt. "We can prove the facts we alleged in the complaint."

Discovery is the next step in the four suits, and Mr. von Loewenfeldt said that early next year plaintiffs expect to ask the court to treat the suit as a class action.

"This is active litigation and we can't comment," said Prudential spokesman Bob DeFillippo.