

Client Advisory | *May 2011*

## State Insurance Regulators Coordinate Investigation of Life Insurers' Compliance with Unclaimed Property Laws

This is an update as to the efforts of various state insurance regulators, and attorneys general, to coordinate an investigation of life insurance claims settlement practices. Specifically, insurance regulators have been investigating a number of large life insurance companies regarding the purported failure to pay, or undue delay in remittance of, death benefits to beneficiaries of life insurance and allied products.



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Because of the duration of some life insurance products, state regulators have expressed concern that policyholders and beneficiaries can become “lost,” resulting in unpaid life insurance benefits. The issue has received national attention this year as state insurance regulators have investigated whether life insurers have complied with state laws regarding unclaimed property. Florida regulatory officials, in particular, have characterized the existence of unpaid life insurance benefits as “a serious problem in the life insurance industry.”

The National Association of Insurance Commissioners (“NAIC”) has formed a task force to help coordinate and facilitate a formal examination of these purported practices. The task force includes insurance commissioners from California, Florida (chair), Illinois, Iowa, Louisiana, New Hampshire, New Jersey, North Dakota, Pennsylvania and West Virginia.

“State regulators are committed to reviewing the full extent of these practices in the life insurance and annuity industry,” said Susan E. Voss, NAIC President and Iowa Insurance Commissioner. “We intend to coordinate multi-state examinations to effectively utilize our state resources in achieving resolution of these issues.”

The NAIC task force has coordinated with both the Florida Office of Insurance Regulation (“FLOIR”) and the California Department of Insurance (“CDOI”) to conduct two joint public hearings designed to

review industry claim settlement practices and compliance with unclaimed property laws. The FLOIR subpoenaed two life insurers for attendance at the first of these public hearings, on Thursday, May 19, 2011. In attendance were representatives from the two insurers, state regulators from Florida, Indiana, Ohio, New Jersey, Tennessee, Minnesota, a representative from Florida’s Attorney General’s office, and Florida’s elected Chief Financial Officer, among others. A public hearing before the CDOI on this topic is scheduled for Monday, May 23, 2011.

The stated purpose of yesterday’s hearing in Florida was to evaluate existing industry-wide practices related to:

- Life insurance and annuities claim settlement issues;
- Use of the United States Social Security Administration’s Death Master File by life insurance companies;
- Compliance with Florida’s unclaimed property laws; and
- Methods by which claim settlement practices may be improved.

Much of the inquiry at the Florida hearing surrounded life insurers’ use of the Social Security Administration’s Death Master File (“DMF”), which is a publically-available database containing information on deceased Americans. The DMF contains over 87 million entries created from Social Security Administration records. The DMF contains information on each decedent

including: name, social security number, date of birth, date of death, as well as residency data. According to Congressional testimony, the DMF is 99.5% accurate.

Life insurers have been accused of using the DMF to stop payments on annuity products, while neglecting to use the list to identify deceased policy holders in order to timely pay life insurance benefits. State regulators have expressed skepticism that life insurers run the DMF on a regular basis against life insurance policies or against annuities in "accumulation." The FLOIR indicates that it seeks to determine whether these or other similar industry practices violate Florida's unfair claims settlement practices law.

Florida regulators note that life insurers "cannot fail to identify deceased insureds and settle claims for death benefits due under their policies based on information in their records, other [sic] otherwise available to them. They also cannot lawfully terminate policies or continue to pay themselves premiums where they know or have reason to know that the insureds have died."

A complementing component of the NAIC task force investigation is to determine whether life insurance companies are complying with their "fiduciary" obligations to report and remit to state coffers unclaimed death benefits, matured annuity contracts, and retained asset accounts as required by various states' unclaimed property laws.

For example, Florida's unclaimed property law requires that:

All funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than five (5) years after the funds became due and payable.

*Florida Statutes*, §717.107(1).

This law further requires life insurers to conduct a "reasonable search" for a lost policyholder. Ultimately, insurers are required to report and remit benefits based on information in their possession, regardless of whether a claim has been filed, perfected or a death certificate is on file. Specifically, under Florida law, and as discussed at yesterday's hearing:

[A] life insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is deemed matured and the proceeds due and payable if . . .the company **knows** that the insured or annuitant has died.

*Florida Statutes*, §717.107(3)(a) [emphasis added].

What exactly constitutes a "reasonable search" or "knowledge" of an insured or annuitant's death remains unclear at this time. In contrast, the majority of state unclaimed property laws include different criteria for the required level of diligence. It is likely that the NAIC, or individual states, may propose regulations to clarify this issue. However, the differing language among state unclaimed property laws will likely present a challenge in terms of regulatory jurisdiction and a uniform solution. We expect that this investigation will continue, including the issuance of subpoenas to numerous additional insurers. We will continue to monitor developments in this ongoing investigation and provide updates as necessary.

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