Robin & Peter on LIFE SETTLEMENTS

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California Life Settlement Suit Against Insurer Could Mean Trouble for Producers

As recently reported by LifeHealthPro.com, a California couple who dropped the face amount of their survivorship insurance policy from $7.2 million to $2 million have brought suit against the issuing insurance company for failing to inform them of the option of a life settlement. Although this action was brought against an insurer, the law suit could also have significant implications for producers.

Sadly, California has not enacted the NCOIL Model Disclosure Act that requires insurers to inform senior clients, that are about to surrender a policy, that the option of a life settlement exists. That being the case, it may be a stretch to hold an insurer responsible for advising policyholders about life settlements in California. However, carriers that forbid their producers from participating in life settlement transactions for their clients are taking the problem a major step further. They are engaging in conduct that goes beyond merely failing to inform. That is, they are actively preventing consumers from getting the information and counsel they need.

While insurers' exposure to liability might be somewhat tangential, producers have a much more direct relationship with their clients. When producers are essentially being gagged by their companies from discussing life settlements with their clients, they are being placed in a perilous position of having to choose between following their company's rules and giving proper advice.

Since most producers hold themselves out as independent advisors, being restricted by their career companies in the advice they may offer, clearly does not fit the definition of independence. In fact, most consumers don't realize that the producer's primary legal responsibility may be to their company and not to their clients. Furthermore, the advertisements of various insurers could well lead a consumer to believe that they were

offering advice, rather than just products.

While the insurance industry has successfully, thus far, avoided a fiduciary standard for producers, it appears to be time that the actual nature of the relationship of producers to their clients is clearly disclosed. It is surely possible to have an agent-company relationship that is not harmful to the client, but when insurers insert themselves into the producer-client relationship, to the possible detriment of the client, the client has a right to know.

The California litigation, irrespective of how this particular case turns out, sheds light on a serious industry problem. It should give insurance regulators more reason to consider the NCOIL Model Disclosure Act. Unbeknownst to the client, insurance company dictates can turn well-meaning producers into mere product pushers rather than valued advisors. This is unfair to both producers, who want to do the right thing for their clients, and consumers, who may be deprived of an opportunity to maximize the value of a life insurance policy that they are about to lapse or surrender.

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