CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION TWO

Fischl v. Pacific Life Ins. Co.

Fischl · No. B320820 · Decided August 3, 2023

SUMMARY

The California Court of Appeal affirmed summary judgment for Pacific Life Insurance Company in a dispute arising from the sale of variable life insurance policies. The court held that California Code of Regulations, title 10, section 2534.2(c) requires a suitability analysis before issuance but does not require the insurer to conduct an independent analysis when a broker has performed one. The court also addressed the effect of the plaintiff's settlement release concerning the broker's negligent acts and ratification by the insurer.

CASE DETAILS

COURT	California Court of Appeal, Second Appellate District, Division Two
WRITING FOR THE COURT	Hoffstadt, J.; Lui, P. J.; Ashmann-Gerst, J.
JURISDICTION	California Court of Appeal, Second Appellate District, Division Two
DECIDED	August 3, 2023
DOCKET	B320820
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a summary judgment entered for Pacific Life Insurance Company in an action involving negligence and Unfair Competition Law claims arising from the sale of variable life insurance policies.
STANDARD OF REVIEW	Summary judgment is reviewed independently. The evidence is viewed in the light most favorable to the losing party below, with evidentiary doubts and ambiguities resolved against summary judgment. Subsidiary questions of statutory, regulatory, and contractual interpretation are reviewed de novo.
PRECEDENTIAL VALUE	Published and certified for publication; precedential under California law.
PARTIES	Peter Fischl v. Pacific Life Insurance Company

TOPICS

life insurance litigation · insurance · statutory interpretation · negligence · contract interpretation

PRACTICE AREAS

insurance law · life insurance · negligence · contracts · consumer protection

QUESTIONS PRESENTED

1. Whether California Code of Regulations, title 10, section 2534.2, subdivision (c), requires an insurer issuing a variable life insurance policy to conduct its own independent suitability analysis even when a broker has conducted one.
2. Whether Pacific Life's issuance of the policies and acceptance of premiums ratified the broker's allegedly negligent suitability analysis in a manner that escaped the scope of Fischl's release.
3. Whether summary judgment was properly entered for Pacific Life on Fischl's remaining negligence and UCL claims.

HOLDINGS

1. Section 2534.2(c) requires that someone conduct a suitability analysis based on the applicant's insurance and investment objectives, financial situation, needs, and other pertinent information before a variable life insurance policy is recommended or issued.
2. Section 2534.2(c) does not require an insurance company to conduct its own independent suitability analysis when a broker has conducted the analysis; the insurer may conduct the analysis itself or rely on the broker's analysis.
3. Even assuming Pacific Life ratified Acosta's suitability analysis and that ratification ordinarily creates direct liability, the release still barred Fischl's claims because the claims arose from Acosta's negligent suitability analysis and Pacific Life did not cause, contribute to, or compound that negligence.
4. Summary judgment for Pacific Life was proper because the release barred the remaining negligence and UCL claims and section 2534.2(c) did not impose a nonreleased duty requiring Pacific Life to conduct an independent suitability analysis.

KEY QUOTATIONS

> *"This last provision obligates someone to conduct a suitability analysis before a variable life insurance policy may be recommended or issued."* (at 13)

> *"For these reasons, we construe section 2534.2(c) as permitting an insurance company to conduct its own analysis into the suitability of a variable life insurance policy for a specific client, or instead to rely upon the suitability analysis conducted by a broker."* (at 20)

> *"Pacific Life's conduct—whether labeled "direct" or "vicarious" in the eyes of the law—thus falls completely within the terms of the release."* (at 27)

FACTUAL BACKGROUND

Peter Fischl, a thoracic surgeon, purchased two Pacific Life variable life insurance policies in 2008 after broker Gregory Acosta gathered information about Fischl's finances, investment goals, risk tolerance, and experience and conducted a suitability analysis. Pacific Life did not independently assess whether the policies were suitable for Fischl, although its underwriters assessed whether the policies presented an unacceptable risk to the insurer. Fischl paid premiums through 2014, partly by liquidating other assets, and surrendered one policy and allowed the other to lapse in 2015 after another advisor told him the policies were unsuitable. Fischl settled with Acosta and related entities and released Pacific Life from claims resulting from Acosta's negligent acts, subject to an exception for Pacific Life's own conduct that caused, contributed to, or compounded Acosta's shortcomings.

PROCEDURAL HISTORY

Fischl sued Pacific Life and several brokers and related entities for fraud, negligent misrepresentation, breach of fiduciary duty, negligence, financial elder abuse, and UCL violations. He settled with the broker-related defendants and released Pacific Life from claims resulting from the brokers' negligent acts, while preserving claims based on Pacific Life's own conduct or conduct to which Pacific Life caused, contributed, or compounded. After successive demurrers, Fischl filed a fourth amended complaint naming Pacific Life alone. The trial court granted Pacific Life summary judgment, rejecting the argument that California regulation required Pacific Life to conduct an independent suitability analysis; it rejected Pacific Life's timeliness arguments. The Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Pereda v. Atos Jiu Jitsu LLC, 85 Cal.App.5th 759, 767 (2022)
- Gonzalez v. Mathis, 12 Cal.5th 29, 39 (2021)
- Elk Hills Power, LLC v. Board of Equalization, 57 Cal.4th 593, 605-606 (2013)
- Salas v. Sierra Chemical Co., 59 Cal.4th 407, 415 (2014)
- People ex rel. Lockyer v. Shamrock Foods Co., 24 Cal.4th 415, 432 (2000)
- Department of Industrial Relations v. Occupational Safety & Health Appeals Board, 26 Cal.App.5th 93, 100 (2018)
- E.M.M.I. Inc. v. Zurich American Insurance Co., 32 Cal.4th 465, 470 (2004)
- Hoffmann v. Young, 13 Cal.5th 1257, 1268 (2022)
- Issakhani v. Shadow Glen Homeowners Assn., Inc., 63 Cal.App.5th 917, 925, 929, 931-932 (2021)
- Vesely v. Sager, 5 Cal.3d 153, 164 (1971)
- Conservatorship of Gregory, 80 Cal.App.4th 514, 522 (2000)
- Dyna-Med, Inc. v. Fair Employment & Housing Commission, 43 Cal.3d 1379, 1389 (1987)
- Klein v. Chevron U.S.A., Inc., 202 Cal.App.4th 1342, 1383 (2012)
- Hoitt v. Department of Rehabilitation, 207 Cal.App.4th 513, 523 (2012)
- City of San Jose v. Superior Court, 2 Cal.5th 608, 616-617 (2017)

- Torres v. Parkhouse Tire Service, Inc., 26 Cal.4th 995, 1003 (2001)
- People v. Valencia, 3 Cal.5th 347, 358 (2017)
- Lucent Technologies, Inc. v. Board of Equalization, 241 Cal.App.4th 19, 40 (2015)
- Sanchez v. State of California, 179 Cal.App.4th 467, 477-478 (2009)
- American States Insurance Co. v. Progressive Casualty Insurance Co., 180 Cal.App.4th 18, 34 (2009)
- Bayuk v. Edson, 236 Cal.App.2d 309, 320 (1965)
- Huong Que, Inc. v. Luu, 150 Cal.App.4th 400, 410-411 (2007)
- Rakestraw v. Rodrigues, 8 Cal.3d 67, 73-74 (1972)
- Reusche v. California Pacific Title Insurance Co., 231 Cal.App.2d 731, 737 (1965)
- O'Riordan v. Federal Kemper Life Assurance Co., 36 Cal.4th 281, 288 (2005)
- People v. Trevino, 26 Cal.4th 237, 242 (2001)
- Rutgard v. City of Los Angeles, 52 Cal.App.5th 815, 827 (2020)
- Tuolumne Jobs & Small Business Alliance v. Superior Court, 59 Cal.4th 1029, 1037 (2014)
- In re Marriage of Prentis-Margulis & Margulis, 198 Cal.App.4th 1252, 1268 (2011)
- Maloney v. Rath, 69 Cal.2d 442, 446 (1968)
- California Assn. of Health Facilities v. Department of Health Services, 16 Cal.4th 284, 298 (1997)
- Evard v. Southern California Edison, 153 Cal.App.4th 137, 146-147 (2007)
- Dickinson v. Cosby, 37 Cal.App.5th 1138, 1159 (2019)
- Shultz Steel Co. v. Hartford Accident & Indemnity Co., 187 Cal.App.3d 513, 518, 523 (1986)
- Alvarado Community Hospital v. Superior Court, 173 Cal.App.3d 476, 481 (1985)
- Allied Mutual Insurance Co. v. Webb, 91 Cal.App.4th 1190, 1194 (2001)
- Ritter v. Technicolor Corp., 27 Cal.App.3d 152, 154 (1972)
- Myers v. Trendwest Resorts, Inc., 148 Cal.App.4th 1403, 1427 (2007)
- Martin v. PacifiCare of California, 198 Cal.App.4th 1390, 1407 (2011)
- Samantha B. v. Aurora Vista Del Mar, LLC, 77 Cal.App.5th 85, 109 (2022)
- Golden Door Properties, LLC v. County of San Diego, 50 Cal.App.5th 467, 555 (2020)
- QDOS, Inc. v. Signature Financial, LLC, 17 Cal.App.5th 990, 1004 (2017)
- Shin v. Kong, 80 Cal.App.4th 498, 505 (2000)
- Sheward v. Virtue, 20 Cal.2d 410, 414 (1942)
- Robinet v. Hawks, 200 Cal. 265, 274 (1927)
- Silberg v. California Life Insurance Co., 11 Cal.3d 452, 462 (1974)
- Van de Kamp v. Bank of America, 204 Cal.App.3d 819, 835 (1988)