WINSTON & STRAWN LLP

NEWS

Winston Wins Motion to Dismiss on Behalf of Virginia Surety in Class Action Suit

OCTOBER 9, 2015

On May 22, 2015, a team of Winston & Strawn litigators obtained a significant victory for client Virginia Surety Company, Inc. in the United States District Court for the Eastern District of North Carolina. The court granted Virginia Surety's motion to dismiss the complaint with prejudice for lack of standing.

The case is one of 14 putative class actions filed by a group of attorneys against Virginia Surety and other defendants for their involvement in the HealthExtras benefits program, which provided permanent disability and emergency accident travel protection coverage to certain credit card holders who elected to purchase the coverage. Plaintiffs alleged that the policies were illegal and void *ab initio* for failure to comply with insurance statutes and that plaintiffs were damaged by paying the fees for such policies. The court adopted Winston's argument that plaintiffs lacked standing to sue grounded on North Carolina's savings statute, which provides in part that "[a] policy delivered or issued for delivery to any person in this State in violation of . . . [the Insurance Code] shall be held valid but shall be construed as provided in [the Code]."

The ruling is particularly significant because the court had previously denied the other defendants' motions to dismiss before Virginia Surety had been added as a defendant, and plaintiffs' counsel relied on the prior rulings in all of the similar actions around the country. The court conceded that its prior rulings were incorrect, effectively gutting plaintiffs' argument, and dismissed the claims against the other defendants as well. The decision bodes well for the remaining pending actions, which involve claims for damages in the hundreds of millions.

In the fall of 2015, the team obtained two additional victories on behalf of Virginia Surety, securing dismissals with prejudice of two related putative class actions in the Eastern District of Louisiana and the Eastern District of Arkansas.

The court rejected plaintiffs' theory and held that the policies were valid and enforceable and that defendant insurers would have been legally obligated to pay benefits had plaintiffs submitted valid claims. The court in Louisiana addressed and dismissed each individual claim for unfair trade practices, breach of the duty of good faith and fair dealing, unjust enrichment, conversion, and civil conspiracy. The court in Arkansas also dismissed the complaint on the additional ground that plaintiff's claims accrued when he first enrolled in the program and began paying premiums in 2002, and thus were barred by the applicable statute of limitations.

With these recent victories, four separate courts have now granted Virginia Surety's motions to dismiss with prejudice, and plaintiffs have voluntarily dismissed Virginia Surety from six of the other related cases.

Winston's team consists of Partners Harvey Kurzweil and Kelly Librera, Charlotte Of Counsel Stacie Knight, and Los Angeles Associate Shawn Obi.
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