SQUIRE PATTON BOGGS

Interstate Insurance Compact Dealt Blow in Colorado Decision

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In the stunning decision of *Amica Life Insurance Company v. Wertz,*[1] the Colorado Supreme Court dealt a serious blow to the Interstate Insurance Product Regulation Commission (the "Interstate Insurance Compact" or the "Compact").

The Court ruled that the Colorado General Assembly was not permitted to delegate authority to the Interstate Insurance Compact to adopt a life insurance product standard that varied from the Colorado Insurance Code. This decision is a stunning setback for state insurance regulation and, in an effort to preserve a more generous suicide exclusion in Colorado law, the Colorado Supreme Court has called into question the Compact product standards, at least in Colorado. However, the ripple effects might be felt nationally. Congressional action may provide an elegant solution to this new problem.

Facts and Background

On January 28, 2014, Amica Life Insurance Company (Amica) issued a US$500,000 term life insurance policy (the Policy) to Martin Fisher, a Colorado resident. Mr. Fisher named the defendant, Michael Wertz, as beneficiary under the Policy. On March 12, 2015, Mr. Fisher committed suicide. Mr. Wertz filed a claim with Amica for the Policy benefits. Amica denied Mr. Wertz's claim, based on the insured's suicide occurring before expiration of the two-year suicide period set forth in the Policy. Amica then filed a declaratory judgment action seeking a Colorado court's interpretation of the Policy to validate that it had denied the claim properly.

The State of Colorado is a member of the Interstate Insurance Compact.[2] The Policy was based on the Interstate Insurance Compact Individual Term Life product standards, and prior to the sale, Amica had filed the Policy form with the Compact, and the Compact staff reviewed and approved the form. Under the Compact's Individual Term Life product standards, a policy must include a suicide exclusion that extends no more than two years.[3] In contrast, Colorado is one of the few states in the nation with a suicide exclusion of only one year.[4]

The *Wertz* case followed an unusual procedural route to this troubling decision. The Federal District Court first attempted to send a constitutional question to the Colorado Supreme Court rather than decide upon a summary judgment motion. The Colorado Supreme Court refused the District Court's attempt, and the District Court then decided the case in favor of Amica. On appeal, the Tenth Circuit Court of Appeals certified a constitutional question to the Colorado Supreme Court regarding whether the Colorado General Assembly could delegate power to an interstate administrative commission to approve insurance policies sold in Colorado under a standard that differs from Colorado statute.[5]

The Decision

The Court first discussed the "non-delegation doctrine", outlining the long-established general rule in Colorado that the legislature cannot delegate its legislative power to another person or agency. The court explained that the non-delegation doctrine is a subset of the constitutional separation of powers. The Court was careful to note that this preclusion is not absolute and certain authority could be delegated to an administrative agency.[6] The Court emphasized that the power to make law is non-delegable, while the authority to execute a law can be delegated. It clarified that the authority to execute a law certainly includes safeguards and administrative standards to protect against unnecessary and uncontrolled exercise of discretionary power.[7]

The Court noted that "the line between the non-delegable power to make a law and the delegable authority to execute a law is not readily susceptible of concise definition."[8] Then, the Court described three cases involving Colorado administrative agencies that had operated in a manner that exceeded their authority with respect to collection of taxes, union elections and an agency committing a crime. Using this analysis (that had seemingly little connection to the operation of the Compact), the Court then noted that if the General Assembly outlined a framework for the operation of a law, it was delegating its authority properly. In this instance, the Court cited a Colorado Liquor Code statute that required implementing regulations that were "reasonable and just." Based on these cases and its comparison to a "reasonable and just framework" standard, the Court stated that it was being asked in this case whether the Colorado General Assembly was able to delegate authority to a Commission that would create uniform standards that would "effectively override Colorado's statutory suicide exclusion."[9]

1 *Amica Life Ins. Co. v. Wertz*, LEXIS 2020 CO 29.
2 Colorado joined the Interstate Insurance Compact in 2004 through adoption of the Compact legislation and the Colorado Division of Insurance participated in the Compact governance thereafter. C.R.S. §24-60-3001 (2019).
3 IIPRC L-04-I (2016)(the Standards).
4 C.R.S. §10-7-109.
5 *Amica*, LEXIS 2020 CO 29 at *8.
6 *Amica*, LEXIS 2020 CO 29 at **10.
7 *Amica*, LEXIS 2020 CO 29 at **11.
8 *Id.*
9 *Id.* at **15.

Instead of beginning with any discussion of the Compact's framework, the Court started its analysis of *Wertz* with a public policy discussion. The Court outlined Colorado's strong public policy that "disfavors suicide exclusions", citing Section 10-7-109 of the Colorado Insurance Code and its 2018 decision in *Renfandt v. N.Y. Life Ins. Co.10,* where the one-year suicide exclusion was narrowed further to require an insurance company to show the insured's intent to commit suicide in order to assert the exclusion successfully.[11] The Court contrasted Colorado's strong public policy against the suicide exclusion with the Compact's two-year suicide exclusion that "effectively overrides Colorado statutory law."[12] Omitting any discussion of the Compact framework or the terms of the Compact legislation as enacted by the Colorado General Assembly, the Court jumped to its ruling that "[i]n our view, delegating to the Commission the authority to adopt a Standard that so circumvents the clear language of section 10-7-109 is to confer legislative powers on the Commission, and pursuant to the authorities discussed above, the General Assembly may not properly do this."[13]

The Court then summarily addressed several of Amica's objections with no additional discussion of the Compact's framework, as adopted by each member state's legislature. Amica noted that each state legislature was able to opt-out of a standard if it had significant concerns. The Court disregarded the Compact's state opt-out feature as being a check on delegation of authority to the Commission. Instead, the Court questioned whether those opt-out standards were even effective since a product standard could go into effect before a legislature would have time to react to a product standard.[14]

The Court focused most of its attention, and harsh criticism, on the fact that the Interstate Insurance Compact was adopted by the member states, including Colorado, but had not been approved by Congress.[15] The Court said that it had no authority before it to support the position that a compact that had not been ratified by Congress could supersede conflicting state law.[16] In the absence of such Congressional consent, the Court said that it was "not persuaded that the [Colorado] legislature has the authority to delegate to interstate agencies powers that it cannot constitutionally delegate to intrastate agencies."[17] With this analysis, the Court found that the Compact's product standards could not preempt the Colorado statutory suicide exclusion.

Analysis and Next Steps

At this juncture, the *Wertz* decision only implicates Colorado suicide exclusions. To date, few states have dwelled on a single life insurance policy term in a manner so contrary to the public policy in most other states as Colorado has done regarding the suicide exclusion. Applying the facts in this case, the *Wertz* case would not apply in many other situations.

Unfortunately, the *Wertz* decision includes generalizations regarding the Compact's authority that are harmful to it. The *Wertz* decision strikes at the heart of each product standard that has been adopted by the Compact Commission over the past 14 years. While we could argue with the Colorado Supreme Court's logic, the fact is that this decision is here and will be damaging the longer it is left unaddressed.

The Compact was designed to smooth out the variations in product standards among the states. The *Wertz* decision could be damaging to the life insurance market, as it puts filing insurance companies in the precarious position of second-guessing whether the approved terms of their filed policies and contracts are enforceable, and if their loss, expectations on these policies are correct. Certainly, few states take the untenable position on suicide as Colorado. Yet, many other portions of the Compact's various product standards can vary from its member state insurance code terms. The *Wertz* decision includes logic that can be applied equally to any of these state variations, creating an instability in the life insurance marketplace that must not be permitted to remain for any significant period of time.

Life insurance companies and 46 states and territories who are members of the Interstate Insurance Compact alike should work swiftly to repair the damage caused to the established life insurance, annuity, disability and long-term care markets served by the Compact. The Colorado Supreme Court identifies the remedy for its concerns about the Commission's authority as being congressional approval of the Compact. It seems that this might be the best and safest option for the Compact to avoid future questions of the Compact's authority and the validity of its well-considered product standards. As Congress searches for public policy solutions for economic stabilization, this approval could be part of the next package.

Contacts

For additional information, please contact one of the lawyers listed below:

Mary Jo Hudson
Partner, Columbus
T +1 614 365 2732
E mj.hudson@squirepb.com

James Eklund
Of Counsel, Denver
T +1 303 894 6194
E james.eklund@squirepb.com

10 *2018 CO 49, ¶ 44, 419 P.3d 576, 584*
11 Author's Note: The Court made no mention of its understanding of moral hazard and the strong public policy associated with including an adequate suicide exclusion in all life insurance policies.
12 *Id.* at **16.
13 *Id.*
14 Id at **17 (no legislature is required to be notified of a new product standard, given the involvement of the state insurance regulator).
15 Id at 22-23.
16 While the Court's decision is narrowly tailored to the Compact and the facts presented, its rational is consequential for actions taken by other compact authorities operating pursuant to interstate compact that do not have the approval of Congress.
17 Id. at **23-24.

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