

Federal Court Dismisses M&E Charge Claims in Putative Nationwide Class Action

BY SHAUNDA PATTERSON-STRACHAN

On September 22, 2009, in *Nichols v. John Hancock Life Insurance Company*, a federal district court judge in the Northern District of Alabama issued an order granting a motion to dismiss the plaintiff's complaint, which had asserted a single count for breach of contract. The plaintiff was the owner of a variable annuity contract issued to him as beneficiary of his mother's contract upon her death, pursuant to his exercise of the contract's "stretch" option instead of accepting the cash death benefit. The gravamen of his complaint was that Hancock improperly charged mortality and expense fees on the separate account funds in his variable annuity because no death benefit was provided under his "stretched" contract.

Hancock's motion to dismiss for failure to state a claim – which came on the heels of its removal of the lawsuit to the federal district court from a state court in Alabama – set forth a number of grounds for dismissal, including

Securities Litigation Uniform Standards Act preclusion, and preemption based on the National Securities Market Improvement Act of 1996. But on the strength of the briefing alone, Judge L. Scott Coogler found sufficient bases for dismissal of the action in Hancock's traditional breach of contract arguments. Specifically, based on the plain language of the contract, the judge determined "it is evident that there are no provisions that a mortality charge or any fee would be collected in exchange for a death benefit. Nothing in the Contract ties any fee solely to the guarantee of a death benefit." Accordingly, the plaintiff failed to allege facts establishing nonperformance amounting to a breach of the annuity contract.

Jorden Burt LLP served as outside counsel for John Hancock in this litigation.

U.S. Supreme Court to Review Arbitrability of Class Claims

BY AILEEN WARREN

On June 15, 2009, the U.S. Supreme Court granted certiorari in *Stolt-Nielsen S.A. v. AnimalFeeds International* to consider whether the Federal Arbitration Act (FAA) permits class arbitration to be imposed on parties whose arbitration clauses are silent regarding class arbitration. The issue presented is the same that the Court declined to reach in *Green Tree Financial Corp. v. Bazzle* (2003).

The district court in *Stolt-Nielsen* vacated an arbitration award which had interpreted a maritime contract's arbitration clause to permit class claims, holding that the award was in "manifest disregard of the law." The Second Circuit disagreed and reversed the decision, reasoning that *Bazzle* held that when parties agree to arbitrate, the question of whether the agreement allows class arbitra-



Silence does not prohibit class arbitration

tion is a contract interpretation issue to be assessed by the arbitrators under the relevant substantive law. The Second Circuit explained that petitioners had not cited any controlling legal authority prohibiting class arbitration when the arbitration clause was silent on the issue.

Petitioners argue that the Second Circuit's interpretation of *Bazzle* conflicts with other circuits' opinions which prohibit class arbitration unless expressly provided for in the arbitration agreement. Respondents counter that petitioners have not demonstrated any of the limited bases for vacating an arbitration award under the FAA. These bases, according to respondents, are limited to corruption, fraud, partiality, or a decision in excess of the arbitrator's powers. Respondents also argue that petitioners had agreed in writing that this was an issue for the arbitrators, and that there cannot be "manifest disregard of the law" where the parties agreed the issue was one of first impression under maritime law. The respondents' brief was filed on October 20, 2009. Oral arguments are scheduled for Wednesday, December 9, 2009.