

**TALKING POINTS FOR
NSSTA MEMBERS
MACOMBER v. TRAVELERS PROPERTY & CASUALTY
MAY 23, 2005**

NSSTA has prepared the following talking points to help guide members who may be asked about specifics of the case. NSSTA will endeavor to update these talking points as events warrant.

I. Overview

- *Macomber v. Travelers Property & Casualty* is a pending class action brought on behalf of claimants who are parties to structured settlements involving Travelers.
- The suit alleges that claimants were harmed because in negotiating their structured settlements, Travelers overstated the cost and/or the present value of the annuity contracts that it acquired to fund the settlements
- Travelers has appealed the class certification ruling.
- The parties are proceeding with discovery while the appeal is pending.

II. The Facts

- No court has ruled on the merits of any of Ms. Macomber's claims.
- There is no allegation that the structured settlements at issue were the product of anything other than the routine arms' length bargaining between claimants and insurers and their respective counsel.
- *Macomber* involves no allegation of bid-rigging and related activities that are the subject of investigations initiated recently by New York Attorney General Spitzer. Those investigations focus on brokers' relationships with their customers, the insureds.
- *Macomber* involves brokers whose customer was itself a property and casualty insurer; so there is no allegation of any harm to any broker's customer or any insurer's customer. Thus, there is no connection between the Spitzer investigations and *Macomber*.
- Neither the Connecticut Supreme Court nor the Superior Court has addressed the legality of the alleged arrangements under which Travelers received part of the brokerage commissions paid by annuity issuers.

III. Timeline

- 1999: *Macomber* is dismissed in federal district court in Connecticut. *See Macomber v. Travelers Property Casualty Corp.*, 1999 WL 118005.
- 2000: *Macomber* is dismissed in Connecticut Superior Court. *See Macomber v. Travelers Property Casualty Corp.*, New Britain, Conn. Super. Ct. No/ X03-CV-99-049-6761-S, July 10, 2000 Mem. of Decision.
- 2002: The Connecticut Supreme Court partially reverses the Superior Court, sustaining dismissal of four counts in the complaint while reinstating six. *Macomber v. Travelers Property Casualty Corp.*, 804 A.2d 180.

Important points about the state Supreme Court decision:

- Because the Superior Court had dismissed the complaint at the outset of the case, prior to presentation of any evidence, the Supreme Court was obliged to “take the facts to be those alleged in the complaint” and to “*construe the complaint in the manner most favorable to sustaining its legal sufficiency.*” (emphasis added).
 - The Court specifically noted: “We do not consider, for example, whether the plaintiffs can prove that in fact they had been harmed.”
 - The Court went on to explain: “*In other words, we do not consider whether the defendant in fact had made any misrepresentations as to the cost of the annuity; whether, but for such misrepresentation, the plaintiffs would not have accepted the settlements; and whether, as a result of the alleged misrepresentations, the plaintiffs have received an annuity with a reduced value and a reduced income stream resulting therefrom.*” (Emphasis added.)
 - The Court also noted that it was making no determination regarding allegations that Travelers’ receipt of portions of the brokers’ commissions— payments characterized by Ms. Macomber as “rebates” — violated Connecticut and New York law.
- 2004: Connecticut Superior Court certifies *Macomber* as a class action.

IV. Related Cases

- *Macomber* is one of several state and federal actions asserting similar claims.
- All of the other actions have been dismissed (as the *Macomber* case itself was dismissed), because the courts concluded that the plaintiffs, having received the benefit of annuity contracts that provide the agreed-upon periodic payments, could not establish that they had been harmed.
- The dismissed actions include:
 - 1) *Abdullah v. Travelers Property Casualty Corp.*, U.S. Dist. Ct., D. Conn. No. 399-CV-155, 83 F. Supp.2d 289 (1999) (granting dismissal motions);
 - 2) *Huaman v. Travelers Property & Casualty Corp.*, U.S. Dist. Ct., D. Conn. No. 398-CV-1093;
 - 3) *Ayling v. Travelers Property & Casualty Corp.*, U.S. Dist. Ct. E.D. Pa. No. 99-32-43 (transferred to Connecticut and subsequently dismissed);
 - 4) *Potts v. Prudential Property and Casualty Co.*, Hudson Cty. N.J. Super. Ct. No. L-0135-99.

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