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The *WRNewswire* is created exclusively for AALU Members by insurance experts led by Steve Leimberg, Lawrence Brody and Linas Sudzius. *WRNewswire* #15.04.15 was written by Linas Sudzius of [Advanced Underwriting Consultants](#).

TOPIC: *Alaska Asset Protection Trust Worked Against Its Beneficiaries with Regard to Statute of Limitations Related to Life Insurance Complaint*

CITES: [*The 2002 Lawrence R. Buchalter Alaska Trust v. Philadelphia Financial Life Assurance Company*](#), No. 12-CV-6808 (KMK), 2015 WL 1455805 (USDC S.D.NY, Mar. 31, 2015).

SUMMARY: An Alaska asset protection trust sued an insurance company over irregularities related to one of the sub-accounts in a trust-owned private placement (“PP”) variable universal life (“VUL”) contract.

The federal district court in New York dismissed most (but not all) of the trust’s claims, ruling that they were filed too late to meet Alaska’s relatively short statute of limitations.

RELEVANCE: The decision in this case primarily rests on technical choice of law and statute of limitations analysis. However, there are a few specific lessons of interest to life insurance professionals:

1. Choosing a jurisdiction in which to create an asset protection trust—or any trust for that matter—may have unexpected consequences. In this case, the grantor probably chose Alaska for its laws that strongly protect asset protection trusts. The unintended consequence? When the trust had a complaint against a third party, it missed making most of its claims in a timely manner under the time limit for such suits under Alaskan law.
2. Private placement life insurance can provide qualified investors with additional sophisticated sub-account options. In this case, the court ruled that the trustee of the trust should have complained of irregular sub-account conduct sooner, because, as a sophisticated investor, the trustee was held to a higher level of knowledge than the average life insurance policy owner.
3. PP VUL contracts typically offer more sophisticated and potentially high upside investments than can be found in more common life insurance products. The downside is that some of those investments carry higher investment and liquidity risks that owners of off-the-shelf VUL contract owners do not face.

4. Insurers that offer PP life insurance may owe a duty to policy owners to carefully evaluate the various investment choices that are offered in the product's sub-accounts.

FACTS: Lawrence Buchalter created and funded an Alaska asset protection trust for his and his family's benefit in November 2002. Under its terms, payments of the Trust's principal and income to the Trust's beneficiaries were to be made at the discretion of the Trustee. Buchalter appointed the Alaska Trust Company as an independent trustee. In 2012, Buchalter appointed Stephen Harris as a co-trustee. Buchalter and Jeffrey Brown were the trust's investment advisors.

Shortly after its creation, the trust acquired a PP VUL policy issued by AGL Life Assurance Company. According to the trustees, the trust paid AGL \$4.5 million in premiums for the survivorship PP VUL policy.

The court explained that private placement life insurance is not an off-the-shelf insurance product. The PP policy is offered only to qualified investors. The restriction is necessary because the SEC does not supervise the investment practices of the insurer issuing the PP policy.

AGL offered a number of investment choices to the policy owner. The Strategic Stable Return Fund ID ("SSR") was one such choice. SSR was a sophisticated hedge fund investment.

In 2005, the trustee allocated nearly \$3.2 million of the PP VUL contract's value to the SSR account. In July of 2008, the trustee requested that the VUL carrier liquidate the account position in SSR. SSR's value peaked at \$3.9 million in September of 2008.

AGL attempted to execute the sell order in December of 2008, but by that time SSR was dealing with so many requests for redemptions that it froze redemption activity. SSR had not redeemed the sub-account's position prior to the suit being filed in 2012.

Although SSR indicated in many letters to investors between 2008 and 2011 that redemption distributions were likely to be imminent, the redemption did not occur. As of November of 2012, the estimated value of the trust's PP VUL sub-account position in SSR was only \$356,900.

In 2012, the trustee investigated the relationship between AGL and SSR. According to the complaint, AGL:

- did not do adequate due diligence into the qualifications of the management team of SSR,
- did not properly evaluate the investment philosophy of the fund,
- failed to alert the trust that SSR was being disciplined by the SEC in 2007, and
- failed to warn the trust that SSR's administrator was replaced in 2007.

The trustees filed a complaint in New York federal district court against AGL (now operating as Philadelphia Financial Life Assurance Company) on September 7, 2012. They alleged seven causes of action against the carrier, including negligence, breach of contract, and unjust enrichment. AGL moved to dismiss all counts of the complaint.

The court first discussed whether the statute of limitations rules from New York or Alaska would apply to the claims raised in the complaint. After a lengthy technical legal analysis, the court decided that for most aspects of the complaint, Alaska's connections to the case were stronger, and that the Alaska statute of limitations rules for contract claims (three years) and tort actions (two years) would apply.

The court decided that claims based on the insurer's failure to promptly redeem the sub-account position in 2008 were barred by Alaska's three year statute of limitations.

The court ruled that the claims related to AGL's alleged less-than-thorough evaluation of SSR's investment management capabilities and AGL subsequently making the SSR hedge fund investment one of the PP VUL investment options were *not* barred by Alaska's statute of limitations. Therefore, the motion to dismiss those counts was denied.

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