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Legal Issues Affecting Nontraditional Products

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Recorder: DON N. PATTERSON

Summary: This panel reviews recent litigation, antitrust laws, advertising regulations, and sales illustration regulations.

Mr. Don N. Patterson: We have two distinguished attorneys who will cover such topics as market conduct litigation, class-action lawsuits, state regulatory activity, and the measures insurance companies should take with regard to market conduct. James Jorden is a senior managing partner of Jorden, Burt, Berenson & Johnson LLP in Miami. Mr. Jorden is a nationally recognized expert in insurance and securities litigation. Leading the firm's insurance and securities practice group, Mr. Jorden conducts and supervises a substantial litigation and corporate practice, representing many of the country's largest financial institutions in corporate and pension litigation, corporate financing, securities law matters, including publicly offered securities and insurance products.

Our second speaker, Thomas Tew, is senior partner of Tew & Beasley, with offices in Miami and West Palm Beach. Throughout his career of more than 25 years, Mr. Tew has specialized in securities, insurance, and bankruptcy litigation in both state and federal courts. He has served as bankruptcy trustee and is receiver for both the Securities and Exchange Commission (SEC) and the U.S. Commodity Futures

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Trading Commission, and is counsel for bankruptcy trustees and receivers of the SEC, the U.S. Commodity Futures Trading Commission, the Florida Division of Securities, and the Florida Department of Insurance.

I'm an actuary for Allstate Insurance Company in Northbrook, Illinois. I work in the direct-response business unit of the company.

Mr. Thomas Tew: What we'd like to talk about is an interesting phenomenon that Jim and I have both witnessed and participated in during the 1990s. Starting with the Metropolitan Life investigation, we've seen an interesting change in direction in the national regulatory atmosphere and in the class-action atmosphere that has had a very marked impact on the insurance industry as a whole. It's difficult to find another time frame of such a few years that such a major change has come about in this industry, which is, frankly, not noted for its rabbit speed. A major rethinking has gone on in the regulator's mind and in the plaintiff's lawyer's mind. Jim will tell you the Federal Securities Reform Act put us out of business in the securities laws, so we're now pursuing insurance litigation. However, there has been a real change in atmosphere.

Your clients are going to be ensnared in this atmosphere that I think has about a 10- or 15-year run ahead of it. If I had made this comment in 1985, people would have laughed at me. If I said in 1988 that Metropolitan Life Insurance Company would pay a $20-million fine, everyone would have laughed at me. I negotiated that fine, and they laughed at me when I suggested it. Prudential paid a $35-million fine recently in an attempt to resolve its regulatory matter with the New Jersey Multi-State Task Force. New York Life, Metropolitan, and Prudential have all set aside and/or reserved for rescission funds of over $100 million. In the Met case we had a rescission pool of $76 million offered to policyholders.

Now, the question is, how did all this happen? It used to be in the state of Florida, for instance, that you might have a market conduct investigation, and some agent usually took the fall. That was the classic example. The company would throw him to the wolves, and the agent would get a rap on his or her record. What happened? We have to start with the Met Life case. I was sitting in my office, and the insurance commissioner at that time, Tom Gallagher, called me from the chairman's office of Metropolitan Life Insurance Company. He asked me to do a 30-day investigation of a market conduct problem over in Tampa.

So we immediately started what I thought would be a routine investigation. At this point nothing would have happened nationally. We would not have seen seven-figure fines and settlements, except for one thing. Unfortunately, the consumer was

a very attractive group for the media to report on. They were nurses. Whole life policies were being sold to nurses as retirement programs.

Well, when we subpoenaed the material, what did we get? We got training tapes. We've got a script that had to be used verbatim or the person would not be hired and permitted to sell. This constituted commonality of facts. This may be a class action. Met immediately goes on the offensive in the media and says that's a bad-apple case. Three days later they say it's a bad-office case. Three days to a week later they said that's a Florida problem. Two weeks later, it's a national problem. And with that, because of the publicity from the case, regulators finally started looking at the problem. The National Association of Insurance Commissioners (NAIC) immediately formed a 41-state task force and appointed me as their counsel. From that moment forward, and for the first time, the members of the NAIC operated in conjunction with each other to look at open market conduct on a national basis.

At that point, I thought that it would never be the same in the insurance industry because for the first time class-action concepts were brought to bear against Met. A coordinated, national, regulatory activity was coordinated against Met. For the first time, the emperor had no clothes. We took sworn testimony of the Met senior executives, including the chairman, the President, and the general counsel. We subpoenaed all their documents. We found stacks of unapproved sales literature, all selling whole life as retirement programs and investment programs.

We required Met to adopt a compliance program. When I took the testimony of the chairman and the president, I asked them what sort of data processing and information retrieval they have. They have it all in their desks. I asked, what do you think would have happened at Merrill Lynch if the head of Merrill Lynch saw that one office in Florida had sold the same stock to every customer for five years? I asked, do you really think that every nurse was in a situation such that a whole life policy was the appropriate coverage? Met had a lot of other products, e.g., annuities, that might have been more appropriate. None of them was sold anything other than a whole life policy.

What happened after that? Well, first of all, for the first time Met's bond rating was written down. I've got a laundry list of things that happened after that. It was devastating. In 1994, I was invited to be the guest lecturer at the In-House Counsel Circle of one of the most prominent life insurance companies in the country. In fact, it was Prudential. I told them that I hope everyone is learning its lesson from the Metropolitan situation. Furthermore, I told them that they were going to have to pay more attention to compliance and suitability.

For the first time, the industry had to seriously think about what it is selling. Is whole life really suitable for 60,000 nurses, most of whom are nomadic and have to go from job to job? And the industry stood up, initially in the press, and defended what they had done until it became very ludicrous. Why does a 55-year-old nurse need a whole life product that will not even build cash value equal to the premiums paid until five to seven years into the policy? No one in the senior ranks of Met had ever sold a policy. No one had ever carried a rate book. This is what's wrong with this industry. They have never been held accountable for the fact that the consumer needs something in the 1990s more than whole life.

In the Met settlement, I distributed the $76 million in restitution to all the people who could prove that they had in some way been misled. They had to submit evidence that they had been misled. It was not a wholesale rescission. Met had to adopt a compliance program. They paid $20 million in aggregate fines to all the states. The largest states received $4–5 million.

We've had the Met and Prudential cases. John Hancock is already in settlement negotiations. New York Life settled for $100 million in a class-action suit. Where has the industry been? Where have the regulators been? If you think this is a new problem, I'll refer you to the 1979 Federal Trade Commission Report about the insurance industry.

The report says: Agents should be required to furnish applicants for life insurance or annuities complete projections of the interest and dividend yields and calculations of the net cost of the policy before the prospective buyer signs the application. It never got anywhere in Congress. The NAIC model disclosure that everyone's beating their chests about was initially prepared in 1976. It has been handed from committee report to committee report to committee report. Is that agency ever going to be able to regulate the industry so that you have the equivalent of a National Association of Security Dealers (NASD) agency that has some integrity in the marketplace?

You have a duty of disclosure. You have a duty of suitability. You do have a duty to basically tell the consumer what you are selling him or her. Disclosure is the touchstone of all the securities cases that judges have heard for years. Commonality of fact is necessary for class-action certification. Many times the industry affected does nothing until there are a few verdicts for hundreds of millions of dollars.

Jim's going to talk about the effect of the class-action litigation, which is really a major threat to most companies. Then we'll talk about the coordination of the

class action and the regulatory environment. At the end of the day, your clients want global solutions to their problems, not just partial solutions.

Mr. James F. Jorden: The only difference between Tom and me is that he tends to be more often on the plaintiff's side and I am exclusively on the defense side of things.

To give you a sense of the climate for the insurance industry, I'd just like to mention a little vignette. Recently I was in the process of interviewing prospective jurors to find out whether they would qualify for a jury in Alabama. There was a woman who was answering our questions. We asked what first comes to mind when you hear the term insurance company. Without batting an eye she said "big money." I think her response reflects a view that is widely held.

The recent development of class-action litigation and basic fraud and consumer-oriented litigation in the insurance industry has been spawned in large measure by the fact that the traditional plaintiffs' class-action lawyers have generally been in the securities field. Securities fraud lawsuits brought against brokerage firms and mutual funds have come out of the federal securities laws, state securities laws, and state laws dealing with fraud.

Prior to the Metropolitan investigation, there was very little publicity associated with the manner and the nature of disclosure involved in the sale of insurance. The newspapers rarely covered this issue. It was much too boring. The Metropolitan investigation led to a real interest in the subject from lawyers whose practice previously focused on securities legislation.

I want to cover three things. First, I want to talk about everyone's favorite state, Alabama, and bring you an update. The second thing I want to talk about is what has happened in the regulatory arena. Third, I will talk about what the litigation and settlements mean for you and your companies in the future.

Let's talk about Alabama first. The first time that I went to Alabama, I went into a courtroom in a very rural county. The judge called us into the back of his courtroom. The plaintiff's lawyers were all lined up on one side. The defense lawyers were lined up on the other side. The judge then said that this courtroom is the courtroom you have been reading about in *Time* magazine and *The New York Times*. He said that some people call this courtroom "tort hell." Then he looked over at the plaintiff's side and he said that others think it's tort heaven.

Tort hell has seen some significant improvement in 1996. First of all, the legislature adopted what's called a mini-code amendment. Now this may not seem particularly important to those of you who are in the traditional universal life area; however, it really is important. It primarily relates to the sale of credit insurance, although it also involves certain other elements of insurance that are sold. Most important, it contains standards for proof that can be carried over into the noncredit insurance area. Punitive damages are knocked out. The collateral protection insurance has received some significant benefits.

However, we didn't get a rogue agent provision. This was particularly important to the traditional insurance industry. We were trying to get Alabama to adopt what's called a rogue agent concept. This would prevent the insurance company from being held responsible for the actions of a rogue agent. For instance, lies told by the agent would not be held against the insurance company. The governor has promised, as has the speaker of the house, to move to try to get that adopted in the next session. Also, we did not get a new punitive damage limitation. We got some for protection for credit insurance sales but not with respect to other types of problems.

However, in the BMW case, the U.S. Supreme Court decided that a $2.5-million punitive damage verdict for a $600 bad paint job was not right. They sent it back to Alabama. At the time they sent it back, they sent five other cases back to the Alabama Supreme Court. All of them were punitive damage verdicts, ranging from $7 million to $50 million.

To give you an example of how extreme it gets in Alabama, Foremost Insurance Company had sold collateral protection in a mobile home policy. They covered an adjacent structure in this policy. The policyholder said that he never had an adjacent structure, so, he claimed that this was unnecessary insurance and that he was overcharged. The overcharged premium was about $14 a year. The jury verdict in that case was for compensation of about $37 and for punitive damages of $14.5 million. That was the kind of thing that was going on. Those cases are all being sent back by the U.S. Supreme Court to the Alabama Supreme Court.

Most recently, the Daisy Johnson case involving Life of Georgia was sent back to the Alabama Supreme Court for further review. That case involved the sale of disability and some Medicare and Medicaid supplement insurance. A total of $3000 in compensation and $25 million in punitive damages had been awarded. This is easily the most important thing that has happened in Alabama. It is forcing the Alabama Supreme Court to be more careful in its review of the

jury awards coming out of the county courts in Alabama. There also have been favorable changes in the composition of the Alabama Supreme Court.

What else exists in Alabama? We still have populist juries. There's no getting around the fact that the juries in the county courts in Alabama will continue to render significant punitive damage verdicts. County judges there are still a problem. They're still largely elected by the plaintiff's bar. However, I think it's getting somewhat better.

One of the things that we've suggested to a number of our companies is to put arbitration clauses in the policy. Unfortunately, the case law in Alabama has not been helpful. There was a case in which a person was buying insurance and the purchase was videotaped. The videotape shows the agent selling insurance and asking if the client understands everything, including the arbitration clause. A lawsuit was filed and the defense claimed that the issue had to be arbitrated. The plaintiff's lawyer claimed that you can't enforce an arbitration clause unless it's a form of contract. Also, each party must know that it's entering into the contract. The judge looked at the videotape and ruled that it wasn't clear that the consumer really understood what arbitration clauses were. That's the climate that you're working in. Nevertheless, I still think it's something that ought to be seriously considered because the issue is not what this county judge will do. The issue is what the Alabama Supreme Court and the U.S. Supreme Court will do.

Populist juries also exist in Mississippi. The federal judges in Mississippi have told the class-action lawyers that they will not certify national class actions in Mississippi. We're seeing something similar in Texas as a result of the tobacco case. In this case, it was determined that each cigarette smoker would have to demonstrate he or she was misled as to the nicotine quality. Therefore, they were unable to get a national class certification.

If this requirement applies to the sale of insurance, where you actually have individual sales going on, it will be very difficult to get a court to certify a national class of consumers in a life insurance case. However, this is a two-edged sword. The tobacco case has also created a problem for those who want to settle these cases, because if you can't certify a national class for trial purposes, you can't certify one for settlement purposes. New York Life, Phoenix Mutual, and other companies have settled national classes.

Most defense lawyers will tell you that when you're faced with this situation, you have a tough choice. On the one hand, you probably can defeat the certification of a class. But if you do defeat the certification, you may be faced

with lawsuits in 50 states before populist juries with potential punitive damages in every single lawsuit. In the face of that, many companies have opted to choose a settlement scenario.

That's an overview of what's happening in the class-action arena. With respect to regulatory issues, let me just deal with that for a moment. At the Breeder's Cup this weekend in Toronto, there was a horse that won called Alphabet Soup. There's a real alphabet soup that has become involved in the market conduct issues and regulatory issues involving insurance products. We have the SEC, the Office of the Comptroller Currency (OCC), the NAIC, the American Council of Life Insurance (ACLI), A.M. Best, the NASD, the Life Insurance Marketing and Research Association (LIMRA), and the Federal Reserve. All have engaged in some actions over the past year that I would characterize as having resulted from market conduct litigation, vanishing premium litigation, and other types of market litigation.

In the variable product area, the SEC has created a new task force within the SEC to investigate an insurance company's sale of variable products and its agent compensation structure. They are doing that in conjunction with the NASD. You should be aware that the NASD has new rules that require all sales material to be filed and approved. This includes telemarketing scripts. The NASD has adopted non-cash compensation rules that are much more rigid and difficult to comply with in compensating not only your own agents but also unaffiliated distributors of your product. The OCC has come out with new guidelines for the sale of insurance in banks. These are extensive guidelines that detail how banks have to sell insurance, what agents can and cannot do, where they can be in the lobby, and what they can say and what they can't say about the sale of insurance.

The NAIC finally did come out after 20 years with hypothetical illustration proposals. I'm not sure that they're the panacea that they're intended to be for any products. These illustration proposals at the NAIC level have led to an equally difficult problem with respect to the sale of variable products because now the question is, how do you carry over the same kind of disclosure provisions to the variable product? The NAIC is now considering that. In fact, I'm chairing a panel next week with the New York Insurance Department and the SEC. They'll be debating which one is going to have jurisdictional authority to regulate sales illustrations in the variable field.

The ACLI has adopted a market conduct approach involving a new voluntary organization that will give the stamp of approval on companies that go through the process of self-auditing. Personally, as a trial lawyer, I'm not particularly in

favor of this because I think it will create additional documents, materials, and problems for the companies who are self-auditing. However, it seems to be something that companies are determined to do. I'm sure that the first discovery request will be for all of your self-auditing materials, none of which are going to be privileged. So you have this whole body of material that you're going to be creating about yourself through this process, which will become the subject of an amended complaint once the plaintiff's lawyers obtain it. It's not, in my judgment, the way that the industry should have gone.

A.M. Best announced a new ratings initiative in which it will consider your whole compliance structure in deciding how to rate you, but will look at whether your compliance environment is adequate. It will look at what you do in response to compliance problems. It will try to apply a financial formula to the risk related to compliance issues. It will be somewhat similar to the risk-based-capital analysis. It should result in a reduction in the rating of companies that are not doing a good job in managing their compliance processes.

Finally, the Federal Reserve has created a big problem for nontraditional products, particularly credit insurance, by declaring that debt cancellation agreements can be sold by banks. However, these debt cancellation agreements are not regulated by the states. It's a horrible result for the credit insurance industry. The hope is that the states will step up and say that if the banks are going to sell this product, they're going to have to get licensed, sell it like insurance, and create an insurance company. That will be an interesting fight between the states and the Federal Reserve Board.

Finally, I'll close with a few comments about the consequences of litigation and the settlements. The litigation itself that has developed over the past couple of years is almost exclusively what I'll call fraud-based litigation. That is, either in the sales process or in the policy itself something was said or something wasn't said that should have been said. Therefore, fraud was committed.

An example of this deals with vanishing premiums. A promise is made that the premium will vanish in seven years. Interest rates go down and now you're telling people that the premium won't vanish on this policy in seven years. It's going to take 10 years, 12 years, or 15 years. There are two allegations in these vanishing premium cases. The first one deals with the vanishing premiums and the second one alleges churning.

For example, moving the cash value out of a whole life policy and into a universal life policy with the assertion that the new universal life policy will be paid up. Of course, what was meant by paid up was that under the universal

life scenario, the customer didn't have to pay any more premium. However, the policy lapses if dividends and interest aren't sufficient to support it. These two allegations exist in every one of the lawsuits that are in the vanishing premium arena. They're basically disclosure lawsuits. They're like federal securities lawsuits. It's amazing what plaintiffs' lawyers deem to be material for purposes of the sale. Was it material that an agent received 95% of the first year's premium? Was it material that the agent could have sold you essentially the same policy, particularly in a universal life scenario, and received only 40%? Those are things that you see in these lawsuits.

Similarly, you see issues related to the sale of disability insurance to someone who was already disabled. The question here is whether it was fraudulent to sell the insurance due to the inability of the insured to collect benefits. More broadly, this issue relates to the sale of any sort of insurance where the insured doesn't meet the qualifications. A decision in the Alabama Supreme Court declared that once you pay the premium, you met the qualifications and the insurance was not worthless. Under some scenarios, benefits would have been payable; therefore the insurance was not worthless. This was a favorable decision for the insurance industry.

There have been a number of cases where the premium structure has been attacked as being unfair or inappropriate, particularly regarding credit insurance. There are also cases out there in which the basic argument is that there was a failure by the insurance company to supervise or train. Furthermore, there are cases related to failure to properly license the agent.

Companies will be spending much more money on compliance, oversight, and accountability. Companies may establish a special committee of the board charged with compliance. The structure of a company's law and compliance departments will depend on the type of company and the company's agency system. Another area where much more money will be spent is on training—both internal and external.

Another area of change regards discipline and response. Specifically, the discipline of wrongdoers and response to consumer problems. This will be more proactive than it ever has been in the past. Insurance companies will be doing what brokerage firms do. Telemarketing solicitations will be monitored. Compliance personnel will question customers as to how the policy was sold. By having established compliance and oversight procedures, punitive damages may be avoided.

A final area where you will be seeing changes is in compensation structure. There's a lot of movement in LIMRA, at the National Association of Life Underwriters (NALU), at the NAIC, and in other places to change the compensation structure in the agency system. I think you're more likely to see what you now see in variable products, i.e., low load or no load.

Mr. Tew: There is a blurring of the lines between many financial institutions all chasing the same dollar, the retirement disposable dollar. There are 7,000 mutual funds. I am surprised that the insurance industry is fighting the idea of disclosure in the 1990s. Seven thousand mutual funds prosper and survive under the SEC summary disclosure requirement. Why? Because it's good business to tell people what the commission is and what your history of operations are.

When I was a young lawyer in Florida, you were not able to be dually licensed in Florida as an insurance agent and a mutual fund salesman because the insurance companies did not permit it. Now banks are selling insurance and annuities. They're taking annuity business away because the banks have more credibility than the insurance industry. Mutual funds are attracting the business that traditionally was taken by the insurance industry.

The problem is that the insurance industry has not been rapid in developing better products for the 1990s. You can't compete selling the same old products, squeezing it into different forms, wrapping it in new wrappers. There are not 7,000 companies selling insurance in this country. There are 7,000 mutual funds regulated by the best regulatory agency in the country, the SEC. All their sales literature is reviewed by the NASD. I don't understand why the insurance industry, as huge as it is, says we're going to have summary disclosure forms for our agents to give out. I don't think the industry gets it yet, and they're easy pickings for people like myself.

New agents at Metropolitan were given a canned script that never used the word insurance and analogized it to a certificate of deposit (CD). They were not even permitted to go on a training call until they memorized it verbatim. Then they were put on a plane and sent to 34 states to sell until they were burned out and cast aside. That was their first experience in the insurance industry at Metropolitan, and this happened in the 1990s. It also happen at Prudential in the 1990s, at John Hancock in the 1990s, and at New York Life in the 1990s.

I've asked the questions of the chief executives. I get answers that would get them barred from the securities industry. If you went in front of a mutual fund distributor and asked them the questions that the insurance industry doesn't

want to answer, the SEC would remove their ticket. Jim wants rogue agent legislation. The insurance industry is afraid to be held accountable for their own agents. Do you think Metropolitan should be accountable for its agents? If Merrill Lynch is accountable for its agents, why shouldn't the insurance industry be accountable for its bad apples?

Mr. Jorden: If you give us a NASD, with all the protections associated with that, then that creates a different scenario.

Mr. Tew: The NASD is what the NAIC or some variation should have been. Instead, they've been lapdogs of the industry. The ACLI, without even a name on it's door in Washington, sits around as a shadow government in the insurance industry. They should have stepped up and straightened this mess out. I have no sympathy for the insurance industry. They have all the power, all the money, all the access, all the goodwill, all the touchy-feelies, and they're blowing it. Don't you think the securities industry is laughing when Met gets pounded for $76 million plus $20 million in fines?

I would think that finally they would say, let's stop messing around. Let's admit we need training. Let's admit we need policies that work in the 1990s. Let's make some summary disclosure. Let's compete with the securities industry as we need to compete. Let's compete with the banks. The banks are a giant that's going to eat all your lunches because the banks are mom and pop. They have the bricks and sticks paid for. They're on every corner. They will beat the securities industry and the insurance industry once they cross over that line and start selling more securities, mutual funds, and insurance. Regarding the rogue agents, you shouldn't all run from your responsibility to train those people and be responsible for those people.

The situation in Alabama is disgraceful, but the insurance industry did a lot of work to get it there. Often the policyholder was getting his brains beat out by seven or eight lawyers on a decent claim. That was litigation, one-on-one. Then someone figured out it didn't have to be one-on-one. If I find a printout and get a common fact, commonality of fact, that some computer system spit out a fraudulent vanishing premium illustration, if I have my agents running all over the country selling it, I have commonality. I have class action. It's not one-on-one anymore.

People don't realize that state judges can certify national classes; it's not only the federal district courts that can do it. It's a joke that these large insurance companies are finally establishing their first compliance programs only after

incurring these large settlements. The programs they are establishing are no different from those that have existed in the securities industry for years.

Now, let's list some of the things that Prudential will be required to do in the 1990s. First, Prudential will be required to develop a system for receiving consumer complaints and submit them to the state agencies. Quarterly reports on consumer complaints should be compiled for each state. This really is a very reasonable requirement. After all, you're in the consumer business.

Prudential must issue directives to the chief compliance officer assuring that sales personnel are provided with additional training. If this were an audience of the securities industry professionals, they'd be on the floor laughing. If they didn't comply with this requirement, the SEC would be in the next day.

Additionally, Prudential must state in writing that every life agent attended a seminar. Prudential must develop a written policy statement regarding progressive discipline. Prudential must issue a written directive that all complaint records must be kept on a database. All disciplinary decisions regarding improper sales practices by agents should be removed from the authority of field management.

Mr. Jorden: Since well before the 1933 act, which was the first time securities firms were regulated, the insurance industry has been heavily regulated. It has been oriented very much toward compliance, much more than the brokerage or the mutual fund industry. If these cases you have been discussing were tried individually, most of these class cases would fail because every one of the people with these illustrations had language at the bottom of the illustration that says that this is merely an illustration. These rates are hypothetical. There is no guarantee that these interest rates will be paid in the future.

It's certainly true that there have been instances just like there are in the brokerage and the mutual fund industry where individual cases of misleading disclosure, nondisclosure, improper disclosure, and improper promises are made by agents. I've defended cases where an agent has specifically instructed a client to ignore specific language or where an agent has guaranteed that rates will be paid forever. There will always be individual cases like that.

I agree with Tom that the traditional whole life insurance industry has to provide more disclosure-oriented documents associated with the sale. The documents must be readable. I think all companies are moving in this direction. I don't think anyone is complaining too much about the requirements imposed on Prudential or any of the other companies. I want to make one final point with

respect to the vanishing premium litigation. The truth of the matter is that in most of these cases, if the policyholder had read the information provided, he or she would have been aware of the limitations of the policy. What's being argued is that the agent didn't make sure that the client had read this piece of disclosure. There is really not much difference between that and a broker calling somebody and saying that he has a really good deal available and he has a prospectus in front of him with 18 risk factors that he fails to mention on the telephone.