Carl C. Scherz

Partner

Dallas

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Carl represents clients in a myriad of large exposure cases, including insurance class actions and complex commercial disputes pending in federal and state courts.

OVERVIEW

With 30 years of experience, Carl focuses on insurance litigation, complex commercial disputes, ERISA-related litigation, and financial services litigation. He represents a diverse range of clients, including insurance companies, business entities, financial institutions, and ERISA-related parties.

Carl's work for insurance clients includes a significant amount in the context of state and nationwide putative class claims, as well as multidistrict litigation. His experience covers a broad gamut of issues, including claims arising from the adjustment of nonguaranteed life insurance elements, such as COI rates, insurance administration practices for life and annuity products, product sales practices, broker and MGA disputes, claims litigation, and alleged state and federal securities violations. Within the broader insurance industry, Carl's practice covers a variety of products, including whole life, universal life, variable life, term life, group life, annuities, health, disability, AD&D, homeowners, and automobile insurance, among others.

Carl represents clients in a broad range of other matters. His representative engagements include banking and financial services litigation; complex business litigation arising from licensing, real estate, and energy partnerships and JVs; ERISA and health care litigation; franchising; alleged construction defect litigation and product liability; and deceptive trade practice allegations.

REPRESENTATIVE MATTERS

Insurance

- Handled a putative national class action and MDL proceeding arising from the adjustment of life insurance nonguaranteed elements (COI rates and other administrative expenses) pending in the Northern District of California. This MDL included separate purported classes of both current policyholders and lapsed policyholders.
- Managed a putative state court class action of Georgia policyholders arising from the adjustment of life insurance COI rates that was pending in the Northern District of Georgia. Following removal to federal court, the trial court dismissed the claims under Rule 12(b)(6), and the dismissal was affirmed by the Eleventh Circuit.

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- Involved in putative national class actions filed in various courts throughout the U.S. arising from the adjustment of COI rates in both individual and group life insurance contexts.
- In California state court, the claims of putative classes of Hong Kong and Taiwanese policyholders arising from alleged sales practice misrepresentations were dismissed on the basis of forum non conveniens. Thereafter, the putative class represented filed a putative Taiwanese class action in the Republic of Taiwan, and the matter was resolved on an individual basis.
- Litigated a large number of other putative national class actions, including cases complaining of administration practices for life products; sales practices in the sale of life and annuity products; coverage issues under automobile and homeowner policies; and the handling of workers' compensation subrogation claims. Several of these matters involved competing class actions and opt-out claims that were consolidated in multidistrict litigation proceedings.
- Representing insurance and financial services companies with sales practice, securities, and claim litigation arising from a variety of insurance products and/or registered securities, including annuities, equity and debt securities, whole life insurance, universal life insurance, variable life insurance, disability insurance, AD&D insurance, homeowners insurance, automobile insurance, catastrophic loss insurance, and health insurance.
- Represented insurers in coverage matters involving reinsurance, CGL coverage, D&O coverage, workers' compensation coverage, professional liability coverage, umbrella coverage, and excess coverage.

ERISA and Health Care

- Representing ERISA plan administrators, third-party claim administrators, and plan providers in actions brought by hospitals and medical providers alleging slow and short payment under PPO and HMO slow payment regulations and under governing provider PPO agreements, as well as complaints arising from the handling and administration of ERISA claims and plans.
- Representing ERISA plan administrators, third-party claim administrators , and plan providers in litigation arising from the handling and administration of ERISA claims and plans.
- Represented the Catholic and Southern Baptist faith-based group employee benefit church plans and their plan members in two separately asserted class action claims brought against the Obama administration complaining of the Affordable Care Act's infringement upon their religious civil liberties. The religious nonprofit class representatives and benefit plans obtained injunctive relief against the government, limiting enforcement of the Affordable Care Act's requirement that their plans provide abortifacient and/or contraceptive coverage in violation of their religious beliefs or suffer devastating fines.
- Represented ERISA third-party claim administrators and excess loss carriers against Texas ERISA plan sponsors in collection matters involving funding and coverage disputes and administration of 401k programs.
- Represented ERISA plan administrators and insurers in claims for health, disability, and life benefits under ERISA plans.
- Represented an ERISA plan administrator against a claim for life benefits and other extra-contractual claims under an ERISA plan where the plan member was terminated and died shortly thereafter or there were other questions of coverage.
- Represented an ERISA plan administrator and insurers in claims litigation and declaratory judgment actions for supplemental coverages under group plans, such as accidental death and dismemberment benefits.
- Represented ERISA plans and plan administrators with filing interpleader actions in a number of matters to resolve claims between conflicting claimants, *e.g.*, beneficiaries, spouses, former spouses, estates, and beneficiaries of such estates.

Commercial Disputes, Product Liability, and Construction

- Representing limited and general partners in disputes arising from partnership rights and obligations in a variety of contexts, including real estate, technology, and energy LLCs, LLPs, and joint ventures.
- Representing developers and contractors in construction litigation involving commercial, multifamily, and

residential construction.

- Representing product manufacturers and distributors in class action litigation and individual cases, typically arising from product liability allegations or truth in advertising.
- Licensing disputes and disputes arising from franchise relationships.

Banking and Financial Services

- Representing banks and mortgage companies with lender liability litigation.
- Representing banks, lenders, and other creditors with banking and credit card consumer practices litigation.
- Representing banks, lenders, servicing companies, and other creditors with mortgage servicing and foreclosure practices.
- Representing banks, lenders, and other creditors with corporate collection and leasing disputes litigation.

Reported Decisions

- *Anderson v. Wilco Life Ins. Co.*, 943 F. 4th 927 (11th Cir. 2021), affirming, 2020 WL 4719095 (S.D. Ga. Aug. 13, 2020). Dismissing claims brought on behalf of a putative Georgia class arising from a COI increase.
- *West v. Wilco Life Ins. Co.*, 2021 WL 5827019 (S.D. Ind. Dec. 8, 2021). Dismissing breach of contract claims brought on behalf of a putative national class arising from a COI increase, but permitting bad faith claims to proceed.
- *Hancock v. Americo Financial Life & Annuity Ins. Co.*, 799 Fed. Appx. 179 (4th Cir. Feb. 5, 2020), affirming, 378 F. Supp. 3d 413 (E.D.N.C. Mar. 29, 2019); see also Hancock, 272 F. Supp. 3d 763 (E.D.N.C. July 25, 2017). Appeal dismissed and remanded, 723 Fed. Appx. 241 (4th Cir. 2018).
- *Couch v. Wilco Life Ins. Co*., 363 F. Supp. 3d 886 (S.D. Ind. Jan. 18, 2019). Dismissing claims brought on behalf of a putative national class arising from a COI increase.
- *Burnett v. Conseco Life Ins. Co.*, 87 F. Supp. 3d 1238 (N.D. Cal. April 9, 2015), dismissal, rev'd, 690 F. 3rd 536 (9th Cir. 2017). *In re Conseco Life Ins. Co. LifeTrend Ins. Sales & Marketing Lit.*, 2017 WL 3599521 (N.D. Cal. Aug. 22, 2017), remanding and closing the MDL. *Burnett v. Conseco Life Ins. Co.*, 2018 WL 4945523 (C.D. Cal. Jan. 24, 2018), transferring venue from transferor court to S.D. Indiana, where the defendant's corporate offices are located.
- *Reaching Souls Int'l, Inc. v. Sebelius*, 2013 WL 6804259 (W.D. Okla. Dec. 20, 2013). Enjoining enforcement of the Affordable Care Act's contraceptive care requirement upon the Southern Baptists' group health plan and plan members). *Little Sisters of the Poor Home for the Aged v. Sebelius*, 2013 WL 6869391, 134 S. Ct. 893 (Mem) (U.S. Supreme Court Dec. 31, 2013), temporary stay enjoining enforcement of the Affordable Care Act's contraceptive care requirement upon the Christian Brothers' Catholic group health plan pending appeal. *Zubik v. Burwell*, 578 U.S. 403 (2016)
- *Tsen v. Crown Life Ins. Co.*, BC 281454 (Superior Court of California, Los Angeles County July 26, 2005). Order granting dismissal of a putative class of Hong Kong and Taiwanese life insurance policyholders for forum non conveniens.
- *Cox v. Allin Corp. Plan*, 2013 WL 1832647 (N.D. Cal. May 1, 2013). Dismissing claims against ERISA Plan Administrator.
- *Gault v. Great-West Healthcare of Texas, Inc.*, 2008 WL 5743853 (S.D. Texas Oct. 21, 2008).
- *Cook Children's Medical Center v. The New England PPO Plan of General Consolidated Management, Inc.,* 491 F. 3d 266 (5th Cir. 2007).
- *Read v. Sun Life Assur. Co*., 2007 WL 9751516 (W.D. Tex. Aug. 13, 2007).
- *Dal-Tile Corp. v. Zurich American Ins. Co.*, 2004 WL 414900 (N.D. Tex. Feb 02, 2004).
- *Nutmeg Ins. Co. v. Clear Lake City Water Authority*, 29 F. Supp. 2d 668 (S.D. Tex. 2002).

AWARDS

- United Way of Metropolitan Dallas, Give Volunteer Award
- The Beckett Fund for Religious Liberty, Legal Services Award

TOP AREAS OF FOCUS

- Class Action
- Financial Services Litigation
- Governmental Audits, Benefit Claims + ERISA Litigation
- Health Care Litigation
- Insurance + Reinsurance

ALL AREAS OF FOCUS

- Class Action
- Construction
- Employee Benefits + Executive Compensation
- Financial Services Litigation
- Franchise, Distribution + Marketing Litigation
- Governmental Audits, Benefit Claims + ERISA Litigation
- Health Care Litigation
- Insurance + Reinsurance
- Litigation + Trial
- Privacy + Cyber
- Product Liability

PROFESSIONAL/COMMUNITY INVOLVEMENT

- Member, State Bar of Texas
- Member, Defense Research Institute
- Member, Dallas Bar Association
- Member, Texas Bar Foundation Fellowship

EDUCATION AND CERTIFICATIONS

EDUCATION

- Baylor University School of Law, J.D., *magna cum laude*, 1994, lead articles editor, *Baylor Law Review*
- Texas Christian University, B.B.A., 1991

BAR ADMISSIONS

- Texas

COURT ADMISSIONS

- U.S. District Court, Western District of Texas
- U.S. District Court, Central District of California
- U.S. District Court, Southern District of Texas
- U.S. District Court, District of Colorado
- U.S. District Court, Southern District of Indiana
- U.S. District Court, Northern District of Texas
- U.S. District Court, Northern District of California
- U.S. Court of Appeals, Eleventh Circuit
- Supreme Court of the United States
- U.S. Court of Appeals, Fifth Circuit
- U.S. District Court, Eastern District of Texas
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Fourth Circuit
- U.S. Court of Appeals, Tenth Circuit

CLERKSHIPS

- Hon. Richard A. Schell, Law clerk, 1994-1995

PUBLICATIONS

- Author, “Eleventh Circuit Affirms Dismissal of Cost-of-Insurance Rate Class Action Against Wilco Life Insurance Company,” Locke Lord QuickStudy, November 30, 2021.
- Author, “Life, Health & Disability – Recent Developments and Trends,” Association of Insurance Compliance Professionals, May 6, 2021.