



Expert's Calculations Are Focus At Close Of MassMutual Trial

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Law360 (February 23, 2018, 9:23 PM EST) -- MassMutual and a class of hundreds of term life insurance policyholders faced off over dividends during closing arguments in a California trial Friday, with the class claiming MassMutual was ignoring the policies' profits and MassMutual countering that the class was relying on a misleading manipulation of the numbers.

At the conclusion of the [12-day trial](#) before Los Angeles Superior Court Judge Maren Nelson, Timothy Morris of [Gianelli & Morris](#), representing named plaintiff Christina Chavez and the class, told a jury that [Massachusetts Mutual Life Insurance Co.](#) had broken the promise it made to the hundreds of people who had purchased participating 20-year term life insurance policies, or T20G policies, from 2000 to 2004 in the Los Angeles area.

As a mutual insurance company owned by its policyholders, MassMutual pays out its excess profits to "participating" policyholders each year in the form of dividends, but Morris argued that the company had shirked its duties by refusing to actually do the math and determine if the T20G policies were entitled to dividends.

"Actuaries are supposed to be making this determination; this determination is not supposed to be made by two laypeople, giving their best guess," he said. "It's not guesswork by people who are not trained to look into these kinds of matters and perform this function."

Morris argued that even though MassMutual had said in those contracts that the cheaper T20G policies shouldn't be expected to pay out dividends, the company couldn't hide behind this language to avoid its promise to run an annual calculation and determine if the

T20G policies had generated more than a 5 percent profit, the threshold over which dividends are payable.

Morris said that the class' actuarial expert, Tom Bakos, had determined that the the T20G polices had generated a profit during the class period, and that MassMutual owed the class \$717,000 or roughly \$550,000, depending how expenses were allocated. Morris told the jury not to believe MassMutual's claim that rising expenses ate up all of the profits on the T20G policies, saying the policies brought in \$318 million in revenue while only paying out \$11 million in death benefits during the class period, leaving the remainder for expenses and profits.

"There hasn't been a lick of evidence — MassMutual hasn't presented any information about why its expenses skyrocketed," he said.

Morris added that only his expert, not those presented by the defense, had used the actual financial information from the policies.

Chavez filed suit in April 2010, and in her trial brief filed last month contends that as part of the language of the participating life insurance policies, the insurer was mandated to annually determine those policies' contributions to the company's excess profits, and return their fair share in a dividend.

On Tuesday, Jennifer Keller of [Keller Anderle LLP](#), representing MassMutual, launched into her closing argument by focusing on Bakos, telling the jury that he was untrustworthy and had manipulated the financial numbers to generate a phantom profit on the T20G policies, which actually had not come close to surpassing the 5 percent profit threshold.

"The Tom Bakoses of the world can probably find any mutual life insurance policy anywhere in the world and pick it apart ... and can find somewhere in there some numbers to manipulate," she said.

Keller said that the saying that there are, "lies, damn lies, and statistics" perfectly encapsulated the plaintiff's case, and that Bakos' testimony in the case about fundamental actuarial principles contradicted what he had said in prior cases or articles.

"Mr. Bakos says what he thinks he needs to say to help the plaintiff's case," she said.

Keller said that Bakos was an “outlier” as an actuary, had been in conflict with the Society of Actuaries, has had his methods shot down by courts in other cases, and had misrepresented his experience as a “chief actuary,” saying his [LinkedIn](#) profile revealed he had been a senior actuary instead.

“If we hired Mr. Bakos to do our taxes, we might end up in the pokey,” she said.

Keller noted that MassMutual had paid out the death benefit on Chavez’s policy within five days, saying the company had done everything it had promised to do, and that the class was not owed any dividends.

The jury retired to begin deliberation shortly after 3 p.m.

For additional coverage of this trial, visit [Courtroom View Network](#).

Chavez and the class are represented by Timothy J. Morris and Mary T. Rahmes of Gianelli & Morris.

MassMutual is represented by Jennifer L. Keller and Jesse A. Gessin of Keller Anderle LLP, and Joel S. Feldman, Sean A. Commons and Melissa O. Evidente of [Sidley Austin LLP](#).

The case is Christina Chavez v. Massachusetts Mutual Life Insurance Co., case number BC435321, in the Superior Court of the State of California.

--Editing by Adam LoBelia.