

LIFE INSURANCE CONSUMER ADVOCACY CENTER
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August 9, 2021

Honorable Chief Justice Tani Cantil-Sakauye And Associate Justices
California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94105

Re: *Williams v. National Western Life Insurance Company*; Case No. S269978
Amicus Letter in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices

I am the Executive Director of the Life Insurance Consumer Advocacy Center (“LICAC”), a non-profit social welfare organization based in California and focused primarily on the protection of California consumers. I write to express LICAC’s support for the Petition for Review in the above-captioned action. LICAC is not a party to this case. It has no direct or indirect financial interest in the case and is not being paid to submit this amicus letter.

LICAC is a relatively new organization, having been formed in 2020 with a mission 1) to alert the public, including consumers and policymakers, about the potential risks of certain types of life insurance products, especially those that are sold as investments, and 2) to advocate for reasonable and essential consumer protections for these types of products. LICAC brings a balanced perspective to consumer protection problems in the life insurance industry. Its five-member board of directors includes one current attorney and one former attorney with a combined 80 years of experience representing insurance policyholders, as well as three financial professionals with a combined 125 years of experience working for life insurance companies or firms providing advice regarding life insurance products.

Petitioner and other amici have adequately addressed why review should be granted to clarify California law as it relates to 1) the duties of honesty, good faith, and fair dealing owed to seniors by insurance companies selling annuities under Insurance Code Section 785; and 2) the duty of care owed by insurance companies

to all annuity purchasers under Insurance Code Sections 10509.910 – 10509.918, and LICAC joins in the request for review on these grounds. LICAC wishes to elaborate on a third reason why review should be granted: the need to make clear that under California law, an independent life insurance agent appointed by multiple insurance companies is the agent of the insurer (even though the agent may also be the agent of the insured).

The court below relied on *Eddy v. Sharp* (1988) 199 Cal. App. 3d 858 and *Mercury Ins. Co. v. Pearson* (2008) 169 Cal. App. 4th 1064 to rule that National Western Life could not owe a duty of care to Williams because the agent, Pantaleoni, was an independent agent appointed by multiple insurers. Slip Op. at 29 (quoting *Eddy*, at 865: “If an insurance agent is the agent for several companies and selects the company with which to place the insurance or insures with one of them according to directions the insurance agent is the agent of the insured.”)

The court rejected *Loehr v. Great Republic Ins. Co.*, 226 Cal. App. 3d 727, 734, which had correctly limited *Eddy* to its holding that the agent was an agent of the insureds and thus owed a duty of care to the insureds. The *Loehr* court correctly reasoned that because an insurance agent may be the agent of both the insurer and the insured, *Eddy* says nothing about whether an independent agent is an agent of the insurer. *Id. Mercury* acknowledged the possibility of a dual agency but nevertheless relied on *Eddy* to hold that the agent acted for the insured in placing the policy, and *Williams* construed *Mercury* as holding that “any fraud by an independent agent is committed in the agent’s capacity as an agent for the insured.” Slip Op. at 29.

As pointed out in the Petition (at 39), *Williams* and *Mercury* conflict not just with *Loehr* but also with *O’Riordan v. Federal Kemper Life Assurance Co.* (2005) 36 Cal 4th 281, 288, which held that a life insurance agent was the agent of the insurer with respect to information provided to the agent by the insured regarding her cigarette smoking. Some elaboration is instructive because *O’Riordan* relied on Insurance Code Section 1704.5, which states:

Except as provided in subdivision (b), a licensed life agent may present a proposal for insurance to a prospective policyholder on behalf of a life insurer for which the life agent is not specifically appointed, and may also transmit an application for insurance to that insurer. If a policy of insurance is issued pursuant to that application, the insurer is considered to have authorized the agent to act on its behalf, **and the insurer is responsible for all actions of the**

agent that relate to the application and policy as if the agent had been duly appointed.

(Emp. added).

Read together, as they must be, Sections 1704 and 1704.5 make clear that an insurer that issues a life insurance policy (including an annuity)¹ is responsible for all actions of its agent that relate to the application and policy regardless of whether the agent was appointed before or upon issuance of the policy or whether the agent is also appointed by other insurers.

This Court should grant review to end the confusion introduced into California law by the holdings in *Williams* and *Mercury* (and by the loose language in *Eddy*) and to clarify that under California law, a life insurer owes a duty of care to its insured with respect to the actions of its agent even if the agent holds appointments by multiple insurers. Such a rule is essential to protect consumers. Unlike insurance companies, consumers generally have no relationship with the agent, no knowledge of the insurance business, and no ability to supervise agents, including by incentivizing good behavior by agents and preventing or deterring bad behavior by agents.

Respectfully submitted,



Brian P. Brosnahan
Executive Director
Life Insurance Consumer Advocacy Center

¹ Annuities fall within life insurance for agent licensing purposes. Cal Ins. Code §§ 32 & 1626. The *Williams* court further erred in failing to observe the distinction between life insurance and other forms of insurance, as it incorrectly relied on Insurance Code Section 33 to find that Pantaleoni was an insurance broker (and thus the agent of the insured). Slip Op. at 29. Section 33 is explicitly limited to “insurance other than life.” California does not license “brokers” for the sale of life insurance. The broker function is instead covered by a “life and disability insurance analyst.” See Ins. Code §§ 32.5 & 1831(d).

CERTIFICATE OF SERVICE

I, RAE T. BARZONA, declare as follows:

At the time of service, I was at least 18 years of age and not a party to this case. My business address is 3755 Avocado Boulevard, #105, La Mesa, California 91941-7301 and my electronic service address is rbarzona@majorfox.com.

On August 10, 2021, I served the Amicus Letter from Life Insurance Consumer Advocacy Center, in Support of Petition for Review of *Williams v. National Western Life Insurance Company* (S269978).

I electronically served the document through TrueFiling, pursuant to Supreme Court Rules Regarding Electronic Service, Rule 9, as follows:

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I also served this document by United States Mail on the following:

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Butte County Superior Court
Case No. 17CV03462

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Third Appellate District
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Sacramento, California 95814
Third Appellate District
Case No. C090436

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 10, 2021, at San Diego, California.

/s/Rae T. Barzona
RAE T. BARZONA

CA Supreme Court
Court Name

PROOF OF SERVICE

S269978
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I declare under penalty of perjury that the foregoing is true and correct.

08-10-2021

Date

/s/Rae Barzona

Signature

Fox, Frank (139147)

Last Name, First Name (Attorney Number)

Majors & Fox

Firm Name