

TIAA Wins Partial Coverage For Class Action Settlements

By **Cara Salvatore**

Law360, Los Angeles (December 14, 2016, 7:06 PM EST) -- A Delaware state jury found Monday that retirement services giant TIAA needed no permission from Arch Insurance Co. before settling two class actions over fund-transfer delays that customers said were purposeful and costly.

TIAA-CREF Individual & Institutional Services LLC settled the suits for tens of millions of dollars and incurred millions more in defense costs, according to court documents; its five insurers had argued that the deals were uninsurable disgorgement. The suits claimed TIAA delayed processing account holders' requests, and sought the difference in the value of its clients' accounts between the date a transfer or withdrawal was requested and the date it was actually processed.

The Delaware Superior Court jury agreed on the verdict form that TIAA proved that excess-coverage provider Arch Insurance Co. had effectively waived the requirement to get its consent for the two settlements and that it "appeared to be futile" for TIAA to approach Arch seeking its consent. The jury also found that TIAA's \$9.31 million in defense costs for the two suits was fully reasonable, something insurers had disputed.

However, the jury cleared Zurich American Insurance Co., saying that TIAA did not provide it proper notice regarding one of the actions.

TIAA, a nonprofit, provides retirement accounts, annuities, and life and other insurance to teachers and other employees of nonprofit colleges, universities and research institutions.

In November, Superior Court Judge Jan Jurden ruled that the settlements of the class actions were insurable under TIAA's professional liability policies. But the judge found that several other coverage issues must proceed to trial.

A fact-finder must resolve two insurers' claims that TIAA improperly failed to obtain their consent for the settlements and a dispute over whether its defense costs in the underlying actions were reasonable, the judge said at the time.

TIAA had multi-tiered professional liability insurance for periods from 2007 to 2010, with Illinois National Insurance Co. providing a primary layer of coverage in each period and St. Paul Mercury Insurance Co., Ace American Insurance Co., Arch Insurance Co. and Zurich American Insurance Co. providing various excess coverage.

The insurers said the settlements constituted uninsurable disgorgement pursuant to New York public policy. Judge Jurden disagreed. In all cases cited by the insurers, the policyholder disgorgements were linked to improperly acquired funds, she said; TIAA, on the other hand, denied liability in its settlements and faced no claims of wrongdoing by the government.

TIAA is represented by Robin Cohen, Adam Ziffer, Robert Manley, Meredith Elkins and Michelle Migdon of McKool Smith PC and Jennifer Wasson of Potter Anderson & Corroon LLP.

Illinois National is represented by Lawrence Bistany, Timothy Martin and Celestine Montague of White & Williams LLP. Arch is represented by Michael Zigelman and Daniel Brody of Kaufman Dolowich & Voluck LLP and Chase Brockstedt of Baird Mandalas Brockstedt LLC. Ace American is represented by James Semple of Cooch & Taylor PA and Edward Gibbons and Tiffany Saltzman-Jones of Walker Wilcox Matousek LLP. St. Paul is represented by Joseph Boury of Litchfield Cavo LLP and Josiah Wolcott of Connolly Gallagher LLP. Zurich is represented by Ronald Schiller and Daniel Layden of Hanglely Aronchick Segal Pudlin & Schiller and Bruce McCullough of Bodell Bove LLC.

The case is TIAA-CREF Individual & Institutional Services LLC et al. v. Illinois National Insurance Co. et al., case number N14C-05-178 JRJ CCLD, in the Superior Court of the State of Delaware.

--Additional reporting by Jeff Sistrunk. Editing by Brian Baresch.