

NEW YORK COURT OF APPEALS ROUNDUP

CLARIFYING CONTRACTUAL AMBIGUITY AND LIMITING CONSUMER PROTECTION REMEDIES

WILLIAM T. RUSSELL, JR. AND LINTON MANN III

SIMPSON THACHER & BARTLETT LLP

February 25, 2025

On Jan. 14, 2025, the New York Court of Appeals issued its decision in *Richard Hobish, et al. v. AXA Equitable Life Insurance Company*, affirming the dismissal of the plaintiffs' claims for breach of contract and violations of General Business Law (GBL) §349. The litigation arose from AXA's 2015 decision to increase the cost of insurance (COI) charges on certain universal life insurance policies, including one purchased by the plaintiffs in 2007.

In a majority opinion written by Judge Shirley Troutman and joined by Judges Cannataro, Garcia and Singas, the court held that AXA did not breach its contractual obligations and that plaintiffs failed to establish actionable damages. Additionally, the majority ruled that punitive damages are capped at \$1,000 under GBL §349, resolving a long-standing dispute regarding the scope of remedies under that statute.

In 2007, the Hobish Irrevocable Trust purchased a life insurance policy from AXA to insure Toby Hobish, who was 82 at the time. The policy had a \$2 million death benefit, provided that the policy remained active upon Ms. Hobish's death.

Policyholders maintained a "policy account" where they could make flexible premium payments. AXA deducted monthly COI charges from this account, and a policyholder's failure to maintain a sufficient balance would result in a policy lapse. The policy granted AXA discretion to adjust COI rates, provided that any increases were "equitable to all policyholders of a given class."

However, it also imposed a cap on COI rates tied to the insured's age. The policy offered a trade-off: while lower COI rates applied in exchange for forfeiting any unused policy account balance upon the insured's death, the policyholder could elect alternative options at the time of purchase that carried higher COI rates but preserved account funds for beneficiaries. The plaintiffs specifically chose the former option to maintain lower monthly premiums.

In 2015, AXA announced an increase in COI rates for policies with death benefits exceeding \$1 million where the insured was over 70 at the time of policy issuance. Plaintiffs' COI charges increased from approximately \$7,000 to \$10,500 per month, raising the annual premium necessary to sustain the policy. Faced with escalating costs, the plaintiffs opted to surrender the policy in 2016, receiving a refund of \$412,688.01, less a \$35,586.49 surrender fee.

In 2017, the plaintiffs filed suit, asserting breach of contract and deceptive business practices under GBL §349. Plaintiffs sought compensatory, consequential, and punitive damages for breach of contract, and actual damages, attorney's fees, and punitive damages on their section 349 claim.

The Supreme Court, New York County denied each party's motions for summary judgment on liability. *Hobish v. AXA Equitable Life Ins. Co.*, 2022 NY Slip Op. 32321(U) (Sup. Ct. N.Y. Cnty. 2022). On the contract claim, the court concluded that the contractual term in question—"equitable to all policyholders of a given class"—was ambiguous within the four corners of the contract, and that the parties had submitted relevant, competing extrinsic evidence that raised a triable issue of fact.

As for the section 349 claim, the court held plaintiffs had sufficiently alleged that they were affected by a deceptive business practice. The Supreme Court, however, rejected various damages theories that the plaintiffs had asserted with respect to both causes of action. Plaintiffs offered only one theory of consequential or compensatory damages: that they were entitled to the full value of the policy's \$2 million death benefit, minus the surrender value, for a total of approximately \$1.6 million.

The court rejected these damages because they did not relate to any actual harm that resulted from AXA's alleged breach. Plaintiffs' claim for "actual damages" under GBL §349 rested on the same theory, and the court rejected it for the same reasons. Plaintiffs also sought approximately \$250,000 in restitutionary damages under section 349, which the court found speculative as to what would have been left on the policy account upon Ms. Hobish's hypothetical death.

Finally, the court denied punitive damages for both claims, noting that the plaintiffs had not pointed to any evidence of AXA's scienter or actions intended to defeat the contract.

Plaintiffs appealed and the Appellate Division, First Department affirmed. *Hobish v. AXA Equitable Life Ins. Co.*, 205 N.Y.S.3d 395 (1st Dep't 2024). The court held that the plaintiffs' damages demand for the full face value of the policy minus the surrender amount was properly dismissed because the plaintiffs chose to exercise the policy's surrender provisions and thus were no longer entitled to the \$2 million death benefit.

The court further held that restitutionary damages were properly dismissed because they were too speculative. Finally, the court affirmed the dismissal of the plaintiffs' punitive damages demand based on breach of contract, and held that GBL §349(h) only allows for limited punitive damages of three times actual damages up to \$1,000. The First Department granted the plaintiffs leave to appeal.

The plaintiffs argued to the Court of Appeals that AXA breached the contract by not applying COI rate increases equitably across all policyholders of Ms. Hobish's "class," which they interpreted as "STANDARD NON-SMOKER," the classification listed in the policy. AXA countered that "class" referred to actuarially relevant groupings, such as policyholders with similar death benefits and insured ages.

The court held that the term "given class" was ambiguous and susceptible to multiple reasonable interpretations. Since both parties presented extrinsic evidence supporting their respective interpretations, the lower court correctly held that summary judgment was inappropriate. Finally, the court agreed with the First Department that plaintiffs' damages theory was untenable because they elected to surrender the policy and accept its cash value rather than seeking injunctive relief to preserve the death benefit.

Plaintiffs had alternatives available, including allowing the policy to enter its grace period or pursuing legal action to enjoin AXA's increased rates, but they chose to exit the policy voluntarily.

Under GBL §349, the plaintiffs alleged that AXA misled elderly policyholders about the likelihood of future COI rate increases. The plaintiffs alleged that AXA's marketing materials minimized the risk of rate hikes and that the company had internally planned to raise rates long before implementing the change.

The court held that AXA had explicitly reserved the right to adjust COI rates and had stayed within the contractual cap. While plaintiffs alleged that AXA had long intended to raise rates, they failed to provide concrete evidence demonstrating intentional fraud or deceptive marketing. Rather, the record showed that AXA had made disclosures regarding the possibility of rate adjustments, and there was no evidence that AXA had definitively planned increases at the time of policy issuance.

The court also affirmed the dismissal of plaintiffs' claims for actual damages under GBL §349, which were based on the same \$1.6 million theory rejected under the contract claim. Additionally, it agreed with the lower courts that restitutionary damages, calculated as the hypothetical amount remaining in the policy account upon Ms. Hobish's death, were speculative and unsupported by the record. The ruling emphasized that a claim under GBL §349 requires actual and quantifiable harm directly attributable to the deceptive act.

Plaintiffs sought punitive damages under both the breach of contract and GBL §349 claims. A majority of the court rejected these claims, emphasizing that punitive damages for breach of contract require proof of conduct that is "egregious" and "aimed at the public generally."

Plaintiffs' allegations failed to meet this high standard. In ruling on this portion of the dispute, the majority definitively resolved a legal dispute over whether GBL §349 allows for punitive damages beyond its treble damages provision. Citing legislative history and statutory language, the majority held that GBL §349 only permits punitive damages up to three times actual damages, capped at \$1,000.

The decision aligned with prior rulings restricting statutory damages to those expressly provided by law and overruled conflicting Appellate Division and federal court interpretations that had allowed uncapped punitive damages in consumer protection cases.

Judge Caitlin J. Halligan wrote an opinion, joined by Chief Judge Wilson and Judge Rivera, concurring in the result but criticizing the majority for reaching the question of punitive damages unnecessarily. According to the concurrence, judicial modesty required that the court decline to address the issue because it was not necessary to resolve the dispute and the parties did not brief the question extensively.

The majority responded that the issue was preserved, decided by the First Department, and briefed to the court. Given the conflicting Appellate Division and federal court decisions interpreting New York law, the majority saw resolution of the issue as an institutional responsibility.

The Court of Appeals' decision reaffirmed key principles of contract interpretation, statutory consumer protection law, and punitive damages in New York. This ruling clarifies contractual rights for policyholders of universal life insurance policies and restricts consumer protection remedies under GBL §349, particularly in cases involving sophisticated financial products.

By addressing both contractual ambiguity and the scope of punitive damages, the decision significantly impacts how insurance disputes and consumer protection claims will be litigated in New York moving forward.

William T. Russell Jr. and Linton Mann III are Partners at Simpson Thacher & Bartlett.

This article is reprinted with permission from the February 25, 2025 issue of New York Law Journal. © 2025 ALM Media Properties, LLC. Further duplication without permission is prohibited. All rights reserved.