

## 7th Circuit Reinstates Case Based upon Conflicting Provisions in Contract Regarding the Critical Right to Terminate

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In the recent case of [Life Plans, Inc., v. Security Life of Denver Insurance Co.](#), a divided panel of judges of the **United States Circuit Court of Appeals for the Seventh Circuit** reversed a lower court judge's decision granting summary judgment in favor of the defendant which had argued that it had an unequivocal right to terminate its contract with a life insurance brokerage agency with which it had partnered, albeit briefly, to jointly develop a new type of insurance policy. The language in question provided that the Agreement between the parties would "continue indefinitely, until terminated by either party upon thirty (30) days written notice, delivered by certified mail." The defendant, an insurance company, apparently developed cold feet regarding the inherent riskiness of the policies to be issued as part of the partnership, and gave notice of termination just a few months after signing the Agreement. Because it strictly complied with the notice requirement before terminating, the Company successfully argued to the lower court that as a matter of law, it could not be liable to the plaintiff, the Agency.

Unfortunately for the Company, however, there was a separate provision in the Agreement that stated: "The Company agrees to accept at least \$100,000,000 of premium per twelve month period...from July 1, 2011, until June 30, 2014. The plaintiff argued that this evidenced a longer term commitment that superseded the termination right, at least until the Company had accepted at least \$300,000,000 in premiums over an initial three year term. The Agency sought \$21,000,000 in commissions and fees that it claims it would have earned had the Company honored the contract and accepted the premiums over the three-year term.

In its review, the Court emphasized that in attempting to derive the parties' intentions from the words that they used in their agreement, it was important to attempt to construe the agreement "as a whole, giving effect to all provisions therein" whenever possible. A majority of the three judge panel ultimately concluded that provisions regarding termination, on the one hand, and a three year commitment, on the other hand, simply could not be reconciled, thereby rendering the Agreement ambiguous-meaning each side's interpretation was deemed plausible by the Court-with respect to the right of termination. The case was therefore reinstated, meaning that a jury may ultimately be charged with deciding what the parties intended, whether the contract was breached by the Company, and what (if any) damages were incurred by the Agency as a result of any such breach.

The case offers a cautionary tale to the drafter of any contract regarding the importance of maintaining consistency on the major deal points between the various sections of a contract. For the Company, the unfettered right to terminate the contract on thirty days' notice was paramount, and it clearly believed (as did one of the three judges on the appellate panel) that the language in the section governing "termination" adequately assured it of such right. The Company's expectations however were subverted by other sections of the contract, which the majority concluded could at the least be plausibly read to suggest that the unfettered right to terminate began only after the initial three year term was completed. Even skilled lawyers can lose objectivity after being immersed in negotiation and drafting process for any lengthy period. There is utility, therefore, in having your General Counsel (or counsel who was not involved in the negotiation and drafting of the contract) review all proposed major contracts before they are finalized and signed to assure that they are consistent from section to section with respect to the essential deal points that you have identified.

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