

# ***The “Daily Plan-It™”***

**SHUMATE BROKERAGE CORP.**

**Volume 10, Issue 19**

**9/18/2008**

## Can An Estate Rescind A “Life Only” Annuity?

A case in California raised an interesting issue: Can the Executor of the Estate sue to rescind a “life-only” annuity under the legal theory of mistake?

Jean Simes purchased a single premium life-only annuity from her financial advisor. She paid \$321,000 for an annuity that paid her monthly benefits for the remainder of her life. From reading the case it appears she was creating an income stream for retirement. Unfortunately, she had received only three payments when she was diagnosed with ovarian cancer. She died a week later.

## Executor Sued

The Executor of the Estate is responsible for collecting the assets of the estate for the beneficiaries. Obviously, the \$321,000 Simes paid for a life-only annuity was an asset that ended upon her death. The insurance company basically received a windfall and the estate wanted the money back. The insurance company made three payments and kept the money upon her death. The risk Simes took when entering into a life-only annuity was that she would die too soon; the insurance company took the risk that she would live too long.

The Executor of her Estate sued the insurance company, attempting to rescind the annuity contract by arguing the legal theory of “mistake.” The theory was that Simes made a “mistake of fact.” If she knew she had cancer she would not have agreed to a life-only annuity. The insurance company argued that this was the risk Simes took when she purchased the insurance.

## The Court’s Ruling

The trial court ruled for the insurance company and the estate appealed. The appellate court affirmed the trial court’s decision and ruled for the insurance company again. The decision was simple; Simes bore the risk of mistake. She made the decision to purchase the annuity. The heart of this issue is that the insurance company bore the risk that she was healthy and would live a long life, while she bore the risk that she would not.

## What does this mean to us?

Can anyone say “life insurance”? This case, *Grenall v. United of Omaha Life Insurance Co.*, California First Court of Appeal, No. A118823, is a great example of how life insurance, a life insurance rider on an annuity, or a similar technique could have allowed the deceased a way to mitigate the risk of immediate death. The financial advisor who sold the annuity with a life insurance component would have been a hero to this family (but no one would have known because there would not have been a lawsuit).

## The Risk

This is the name of the insurance game. Whether it’s an annuity or life insurance, one party is betting on a risk going one way while the other party is betting that it goes the opposite. Unfortunately for Jean Simes, she lost and so did her beneficiaries. If you are out there assisting people with these types of decisions, please share her story so her “mistake” will not be in vain. Help families balance their risk with life insurance.

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