

## CalPERS Duped Long-Term Care Policyholders, Suit Says

By **Ciaran McEvoy**

Law360, Los Angeles (August 07, 2013, 5:51 PM ET) -- The California Public Employees' Retirement Fund was hit with a putative class action on Tuesday in California state court, alleging it breached its contracts with more than 100,000 long-term care insurance policyholders by deliberately misleading them over the strength of its investment program.

In 24-page complaint filed in Los Angeles County Superior Court, plaintiffs Elma Sanchez and Holly Wedding allege that CalPERS broke its promises to them and other policyholders that the policies would be "reasonably priced" and that rates "would be fixed and would never rise based on the consumer's age or health."

Earlier this year, CalPERS hiked rates by 85 percent for many of the long-term care policies, which has triggered a backlash and Tuesday's lawsuit.

The plaintiffs allege that CalPERS "suddenly and unexpectedly" advised its policyholders that the long-term care program was "grossly underfunded" and that it had stopped enrolling new members in the program in 2009.

"For years, CalPERS had been pursuing an aggressive 44 percent investment strategy and in 2013 it abruptly shifted to a more stable and conservative 15 percent investment strategy," the lawsuit said. "As a result, the [long-term care] policy fund was and became even more grossly underfunded."

CalPERS runs the second-largest long-term care plan in the United States. It has said the rate hikes are necessary to keep the fund solvent for future claims.

In a Wednesday statement, CalPERS representatives disputed the allegations in the complaint and said that it "took great care in coming to the decision to restructure the long-term care program so that participants could access services when they need them. We consulted with member and policyholder groups and completed rigorous analyses of options, before making the very tough decision that rate increases were necessary."

But the lawsuit states that the hikes have left more than 125,000 putative class members, "many of whom are elderly and on fixed incomes," to be placed in the "untenable position of either allowing their policies to lapse or paying CalPERS' increased premiums that they simply cannot afford."

Sanchez, 88, originally paid \$179 per month when she first enrolled in the program during the late 1990s, but in 2015 her monthly premium will be \$793.75, the lawsuit states.

Wedding, 63, paid \$58 per month when she enrolled in the program, but starting in 2015 her monthly premium will be \$304.41, the complaint states.

The lawsuit alleges that CalPERS “at all times” knew its long-term care policies were “grossly underpriced and that it would inevitably have to raise premiums due to poor investments.”

Had the putative class members known the truth, they would not have purchased or renewed the policies and would have been able to purchase alternative insurance at a younger age “at a substantially reduced overall cost and avoided the significant rise in premiums that will likely force many [putative] class members to either drop their policies or accept the reduction in benefits now mandated by CalPERS,” the lawsuit said.

The plaintiffs are represented by Michael J. Bidart, Gregory L. Bentley and Clare H. Lucich of Shernoff Bidart Echeverria Bentley LLP, Stuart C. Talley of Kershaw Cutter & Ratinoff LLP and Gretchen M. Nelson and Stuart R. Fraenkel of Kreindler & Kreindler LLP.

Counsel information for CalPERS was not immediately available.

The case is Elma Sanchez et al. v. California Public Employees' Retirement System, case number BC517444, in the Superior Court of the State of California, County of Los Angeles.

--Editing by Jeremy Barker.

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