

Individual Life and Disability Product Litigation with DO&CB

d'Arcambal Ousley & Cuyler Burk, LLP ("DO&CB") specializes in nationwide individual life and disability product litigation with an emphasis in New York, New Jersey and Pennsylvania. Having obtained a deep understanding of life insurance companies from representing them as both inside and outside counsel for over 20 years, we proactively represent our clients in a variety of actions including:

- Rescission actions
- Interpleader matters (see separate information sheet)
- Lapse actions
- Sales practices matters
- Life and disability claim litigation

...and here are some of the successes we've had:

- New York State appellate victory affirming summary judgment rescinding a \$1,000,000 life insurance policy based on material medical history which plaintiff claimed the company should have known of from available records. Court of Appeals denied a motion for leave to appeal.
- Second Circuit victory affirming post-trial decision to rescind a disability policy after the two year contestability period based on factual determinations that the insured acted with fraudulent intent and that her misrepresentations continued in her trial testimony.
- Third Circuit victory affirming summary judgment rescinding a \$1,000,000 policy based upon material misrepresentations where plaintiff's primary argument was that the insured did not understand English.
- Eastern District of New York granted summary judgment rescinding a life insurance policy based on financial misrepresentations, holding that an insurer is not estopped based on an agent's knowledge of the misrepresentation.
- New York County trial court granted partial summary judgment finding that the inability to understand English was not a defense and dismissing extra-contractual damages claims. Court directed that the rescission case be heard by the court, not a jury, and the court rendered judgment in the insurer's favor after trial.
- New York Appellate Division affirmed summary judgment holding that an agent has no fiduciary duty to a beneficiary of a life insurance policy.
- New York Appellate Division affirmed trial court holding that insurer had six years to rescind policy under the New Jersey Fraud Prevention act, instead of the 2 years allowed under the contestability clause, for misrepresentations concerning identity of premium payer and misrepresentations regarding medical history. Trial Court also found that the premium payer misrepresentations were contrary to anti-money laundering and Patriot Act requirements.
- New York County trial court dismissed action brought by an investor alleging fraud in connection with variable life and annuities products.



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About d’Arcambal, Ousley & Cuyler Burk LLP

For over twenty years, d’Arcambal Ousley & Cuyler Burk, LLP (DO&CB) has provided exceptional legal counsel to Fortune 500 companies and large financial institutions. For each client engagement, DO&CB emphasizes cost-effective approaches, early case assessments, and strategic planning and expertise. Our lawyers previously practiced in corporate legal departments and large law firms, so we understand the voice of the customer and its business and legal objectives. DO&CB is women-owned with offices in New York City, New Jersey and Philadelphia.

Featured Partners and Of Counsel handling Individual Life and Disability Product Litigation

Michelle J. d’Arcambal (Partner)

For over 20 years, Ms. d’Arcambal has defended a wide variety of life, health, and disability individual and class actions. She provides strategic advice aligned with the client’s litigation and business goals, including resolution. As a result of her in-house litigation experience at MetLife, Ms. d’Arcambal understands the needs of her clients and focuses on achieving their objectives in the most efficient way possible. When a matter cannot be resolved by motion or mutual agreement, Ms. d’Arcambal leverages her trial and appellate experience in front of appellate judges and trial courts. Ms. d’Arcambal was previously a commercial litigation partner at Ross & Hardies, now known as McGuire Woods LLP, and an associate at Brown & Wood, LLP, now known as Sidley Austin, LLP. She is a 1985 graduate of the University of Wisconsin Law School and graduated from Smith College in 1981.



Jodie L. Ousley (Partner)

Ms. Ousley has handled many and varied matters relating to life, health, and disability litigation, including ERISA, since 2004. She has defended and resolved, through mediation or otherwise, long-term group (including ERISA) disability and life benefits matters. She has successfully litigated life and disability matters for fifteen years and provides strategic advice on risk assessment. In addition, she has successfully represented the interests of financial institutions in federal actions involving fraud, negligence, and ADA and DTPA claims. She began her legal career in New York City as an examining attorney for the Public Assistance and Grants Unit of the New York City Department of Investigation (DOI). Ms. Ousley attended Oxford University and Southern Methodist University School of Law, where she graduated cum laude in 1997. She received a B.A. degree in 1992 from the University of Texas.



Jaclyn DiLascio Malyk (Partner)

Ms. Malyk, a seasoned litigator, focuses her practice on insurance disputes, including life, health, disability, insurance coverage, insurance products regulation, and general contract litigation. Ms. Malyk regularly represents insurance companies in ERISA and non-ERISA disability and accidental death benefits claims, life insurance rescission actions, and disputes between providers and provider networks. Ms. Malyk has a deep understanding of insurance products and regulations, and she strategically advises clients on state insurance and annuities regulations in the context of new product development and the operation of existing products. Ms. Malyk used her strategic and client focused approach in a partnering with a client to develop a programmatic and proactive approach to discovery to increase success and cost-effectiveness. She also gained invaluable experience and insights into the insurance industry while a member of in-house law department of Prudential. Ms. Malyk graduated from Rutgers University in 1998 with a B.A., and achieved her J.D. from Seton Hall University School of Law in 2002.



Jim Lenaghan (Of Counsel)

Mr. Lenaghan is an insurance and employee benefits litigator with almost forty years of experience. Mr. Lenaghan brings his product knowledge and invaluable perspective to proactively assess matters and strategically posture them for favorable results. Prior to becoming of counsel to DO&CB, Mr. Lenaghan headed several litigation and insurance legal units at MetLife. Mr. Lenaghan has extensive knowledge of insurance products, life and annuity contracts with and without variable features and securities components, employee benefits plan design, and associated legal and financial requirements. In addition to his work for DO&CB, Mr. Lenaghan directs a state life and health insurance guaranty association. Mr. Lenaghan is a 1974 cum laude graduate of Harvard Law School and a 1971 cum laude graduate of University of North Carolina at Chapel Hill.

