

## Markman Hearing Definitions

As a result of the hearing the judge resolved the meanings of the following terms or expressions as follows:

**Annuity product:** a term generally used to describe the concept of a “fixed, variable, deferred, immediate, or other annuity contract or option that guarantees the payment of a sum of money at intervals of time”<sup>15</sup>. That is, annuity product is not limited in its meaning to only a phase of an annuity, e.g. the payout phase as opposed to the accumulation phase.

This definition must be read generally as variable annuities which provide variable payout benefits do not “guarantee the payment of a sum at intervals of time”. A basic feature of variable annuities is that investment risk is transferred to the annuity contract owner. Therefore, the account value during the accumulation phase or the investment performance during the payout phase can behave in such a way that payout benefits either never start or terminate if investment performance turns negative.

**Account value:** This term as used in the claims means a monetary value that is maintained in the post-annuitization phase of an annuity.

Relative to the claimed invention the post-annuitization phase begins when payments commence even though the applicant distinguishes these payments from traditional annuitization.

There certainly is an annuity account value during the accumulation phase of an annuity but that is not the meaning of account value used in the claims. The account value referred to in the claimed invention is an account value in the post-annuitization phase.

**Guarantee of lifetime payments:** This term means “a guaranteed distribution of money for the lifetime of a designated individual or individuals”. “The word ‘payments’ necessarily refers to distribution, payout, or post-annuitization phase.”<sup>16</sup> That is, “payments” refers to all payments in the post-annuitization phase.<sup>17</sup>

The Markman Hearing Opinion, however, does not make clear whether this guarantee implies a minimum guaranteed amount of the payment or simply is a guarantee that a payment will be made of any amount. Since, if payments are made as described in the specification as variable payouts, the payment amount could be reduced to zero.

It is reasonable to make a distinction between a *guaranteed minimum benefit payment* as used in other claims in this IP family and a *guarantee of lifetime payments*.

**Payment is not a withdrawal:** The words “payment” and “withdrawal” refer to different things. “Payments” correlate with the lifetime guarantee, withdrawals do not.

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<sup>15</sup> Appendix C, Markman hearing Opinion & Order, pg. 13

<sup>16</sup> Appendix C, Markman hearing Opinion & Order, pg. 18

<sup>17</sup> This expression says nothing about the amount of the payment guaranteed.