

SCHWARTZ & BALLEN LLP

1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE
(202) 776-0720

www.schwartzandballen.com

MEMORANDUM

January 13, 2005

To Our Clients and Friends

Re: Federal Court Strikes Down Massachusetts' Limits on Insurance Sales

On January 10, 2005, the United States District Court in Massachusetts held that the Gramm-Leach-Bliley Act pre-empts certain restrictions in Massachusetts law regarding the sales of insurance by national banks. Plaintiffs challenged four provisions of the Massachusetts Consumer Protection Act Relative to the Sales of Insurance which:

- permit bank employees who are not licensed insurance agents to refer customers to insurance agents only if the customer inquired about insurance;
- prohibit banks from paying employees a fee for making referrals to insurance agents;
- allow banks to solicit insurance sales to loan applicants only after the loan application is approved;
- require insurance solicitation to be conducted in an area physically separated from locations where lending and deposit-taking activities are conducted.

The court reviewed § 104 of the Gramm-Leach-Bliley Act ("GLB Act"), which prohibits states from prohibiting or significantly interfering with the ability of a depository institution to sell or market insurance. The court concluded that the four restrictions in Massachusetts law significantly impaired the ability of the plaintiffs to market insurance, and held that the GLB Act pre-empted the provisions. The court also stated, however, that its holding does not interfere with the state's ability to regulate insurance.

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A copy of the court's decision can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.