

SUPREME COURT OF LOUISIANA

No. 98-C-0551

MAJOR BANKS, CHRISTOPHER EDWARDS ET AL

VERSUS

THE NEW YORK LIFE INSURANCE CO., ET AL

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL
FIRST CIRCUIT, PARISH OF POINTE COUPEE
ON REHEARING**

Calogero, C.J. dissenting

I respectfully dissent. The plaintiffs' complaints originate from the allegation that New York Life, *as a corporate entity*, engaged in consumer fraud when it sold insurance policies to them, representing as a major benefit the policies' ability to build cash value, with the knowledge or likely knowledge that its premium offset proposal was not sufficient to pay all future premiums beyond a limited period as projected, and that the policyholders would eventually have to resume paying regular premiums. The insurance products and the associated premiums necessary to keep the policies in force were developed by New York Life itself with certain dividend scales, values, assumptions, mortality experience, expenses, lapse rates, interest rate and investment return projections. According to plaintiffs' allegations, premium costs and cash value projections were then calculated and marketed by New York Life to the public in the form of materials provided by New York Life and through sales agents trained by New York Life. Those materials cited as a major benefit to the policy holder the policy's ability to build cash value and, in a short time, enable policy coverage without future premium payments for the remaining life of the policy. Underlying the plaintiffs' allegations of fraud, use of deceptive sale practices, and breach of its duty of good faith is the common complaint that the policies did not generate sufficient cash value to perform as represented. The source of contention in this case is a corporate decision to market and sell policies which the corporation allegedly knew or should have known would not produce the benefits projected. I believe that common issues do predominate over individual ones, and that the causative link between New York Life's conduct and the plaintiffs' injuries is indeed the same for all plaintiffs.

Moreover, the district court in this case found class certification appropriate. Recognizing the vast discretion imparted to the district court judge in making such a determination, I cannot say that there was an abuse of that discretion in this case. This is why I subscribed to the majority opinion on original hearing and would now on rehearing reinstate that judgment of this Court.