

WEDNESDAY, FEBRUARY 13, 2008
11:00 A.M.

NO. 2

#24704

METROPOLITAN LIFE INSURANCE COMPANY;
METROPOLITAN INSURANCE AND ANNUITY
COMPANY; NEW ENGLAND LIFE INSURANCE
COMPANY; METLIFE INVESTORS USA
INSURANCE COMPANY; GENERAL AMERICAN
LIFE INSURANCE COMPANY; PARAGON LIFE
INSURANCE COMPANY; METLIFE INVESTORS
INSURANCE COMPANY; METROPOLITAN
PROPERTY AND CASUALTY INSURANCE
COMPANY; METROPOLITAN GROUP PROPERTY
AND CASUALTY INSURANCE COMPANY;
ECONOMY PREMIER ASSURANCE COMPANY;
METROPOLITAN TOWER LIFE INSURANCE
COMPANY; AND METROPOLITAN DIRECT
PROPERTY AND CASUALTY INSURANCE
COMPANY,

Plaintiffs and Appellees,

vs.

PAUL KINSMAN, Secretary, South Dakota
Department of Revenue; MERLE SCHEIBER,
Director, Division of Insurance; and
the STATE OF SOUTH DAKOTA,
Defendants and Appellants.

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The Honorable Rodney J. Steele (CIV 04-346)
Retired Circuit Court Judge
for the Sixth Judicial Circuit
Hughes County

STATEMENT OF THE ISSUES

I. Does SDCL 10-44-2 (1982-Present) violate equal protection when it imposes identical premium and annuity tax rates on domestic and foreign insurers?

The trial court found the statute unconstitutional.

- ◆ *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 (1985)
- ◆ *Dakota Sys. Inc. v. Viken*, 2005 SD 27, 694 NW2d 23
- ◆ *State v. American Bankers Ins. Co.*, 374 NW2d 609 (SD 1985)
- ◆ U.S. CONST. amend. XIV, § 1
- ◆ S.D. CONST. art. VI, § 18
- ◆ SDCL 10-44-2 (1982-Present)

II. Does the tax credit provided by SDCL 10-44-4 violate equal protection when the Legislature had a rational basis to grant tax credits to insurers with a significant presence in the state?

The trial court found SDCL 10-44-2 and 10-44-4 through 10-44-6 unconstitutional from and after premium tax year 1970.

- ◆ *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 (1985)
- ◆ *State v. Ala. Mun. Ins. Corp.*, 730 So 2d 107, 108 (Ala 1998)
- ◆ *Gallagher v. Motors Ins. Corp.*, 605 So 2d 62 (Fla 1992)
- ◆ U.S. CONST. amend. XIV, § 1
- ◆ S.D. CONST. art. VI, § 18
- ◆ SDCL 10-44-4

III. Is SDCL 10-44-2 (1970-1981) subject to attack or in violation of equal protection when it was amended to impose identical tax rates on domestic and foreign insurers in the first legislative session after a U.S. Supreme Court decision raised the possibility disparate rates might violate equal protection?

The trial court found SDCL 10-44-2 and 10-44-4 through 10-44-6 unconstitutional from and after premium tax year 1970.

- ◆ *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 (1985)
- ◆ *State v. American Bankers Ins. Co.*, 374 NW2d 609 (SD 1985)
- ◆ *Sanborn County v. Estabrook*, 49 SD 360, 207 NW 164 (1926)
- ◆ *Gallagher v. Motors Ins. Corp.*, 605 So 2d 62 (Fla 1992)
- ◆ U.S. CONST. amend. XIV, § 1
- ◆ S.D. CONST. art. VI, § 18
- ◆ SDCL 10-44-2 (1970-1981)

IV. Did the trial court's award of costs exceed the disbursements recoverable under SDCL 15-17-37 and 15-6-54(d)?

The trial court awarded all costs sought by MetLife.

- ◆ *Casillas v. Schubauer*, 2006 SD 42, 714 NW2d 84
- ◆ *Full House, Inc. v. Stell*, 2002 SD 14, 640 NW2d 61
- ◆ SDCL 15-17-37
- ◆ SDCL 15-6-54(d)