

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-1403, -1491

LINCOLN NATIONAL LIFE INSURANCE COMPANY

Plaintiff-Appellee,

v.

TRANSAMERICA LIFE INSURANCE COMPANY,
WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO,
and TRANSAMERICA FINANCIAL LIFE INSURANCE COMPANY,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Iowa
In 06-CV-110, Judge Mark W. Bennett.

ON MOTION

Before SCHALL, PROST, and MOORE, Circuit Judges.

PROST, Circuit Judge.

ORDER

Transamerica Life Insurance Company et al. (Transamerica) move for a stay, pending appeal, of the permanent injunction issued by the United States District Court for the Northern District of Iowa. Lincoln National Life Insurance Company (Lincoln) opposes. Transamerica replies.

Lincoln sued Transamerica for infringement of its patent related to a method for administering an annuity product. A jury decided that Transamerica infringed and that the claims were not invalid. Subsequently, the district court denied Transamerica's motion for judgment as a matter of law, granted Lincoln's motion for a permanent injunction but allowed Transamerica to continue to use the patented method to

administer variable annuities for 90 days, and required Transamerica to pay royalties for such continued infringement. Transamerica appeals and moves for a stay of the permanent injunction, pending disposition of the appeal.

To obtain a stay, pending appeal, a movant must establish a strong likelihood of success on the merits or, failing that, nonetheless demonstrate a substantial case on the merits provided that the harm factors militate in its favor. Hilton v. Braunskill, 481 U.S. 770, 778 (1987). In deciding whether to grant a stay, pending appeal, this court "assesses the movant's chances of success on the merits and weighs the equities as they affect the parties and the public." E. I. du Pont de Nemours & Co. v. Phillips Petroleum Co., 835 F.2d 277, 278 (Fed. Cir. 1987). See also Standard Havens Prods. v. Gencor Indus., 897 F.2d 511 (Fed. Cir. 1990).

Without prejudicing the ultimate disposition of this appeal by a merits panel, and based upon the motions papers submitted, we determine that Transamerica has not met its burden to obtain a stay of the permanent injunction.

Accordingly,

IT IS ORDERED THAT:

The motion is denied.

SEP - 1 2009

Date

FOR THE COURT

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Dale Randall Brown, Esq.
John Kenneth Felter, Esq.

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JAN HORBALY
CLERK