

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC 00-1527

IN RE GOLDENBERG

ALAN L GOLDENBERG, M.D.,
and
ALAN L. GOLDENBERG, M.D., P.A.
Appellants,

v.

SHIRLEY SAWCZAK
and
KENNETH WELT,
as Chapter 7 Trustee
Appellees

ON A CERTIFIED QUESTION FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
11th Circuit No. 99-10411-F

REPLY BRIEF OF APPELLANTS

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SUMMARY OF REPLY ARGUMENT

Concluding that no Florida case directly addresses this important issue of Florida law, the Eleventh Circuit certified the following question to this Court:

ARE THE CASH SURRENDER VALUES OF DR. GOLDENBERG’S ‘ANNUITY CONTRACTS’ EXEMPT FROM LEGAL PROCESS UNDER FLA. STAT. ANN. § 222.14 (WEST 1998)?

The 7 commercial annuity contracts owned by Appellant, Alan L. Goldenberg, M.D. (herein referred to as either “Dr. Goldenberg” or “Appellant”), are exempt under § 222.14, Florida Statutes. Florida’s Insurance Code regulates annuity contracts like those involved here, and includes annuity contracts in the statutory definition of “life insurance” under the Insurance Code. §§ 625.121(5)(h)3. & 624.602, *Florida Statutes*. Each annuity contract is clearly denominated as an “annuity” within its four corners, and denominates Dr. Goldenberg as the “Annuitant” and “Owner”. Each annuity company is obligated to pay annuity payments to commence on an “Annuity Date”. Payment is guaranteed by the annuity company.

Florida’s Insurance Code provides for annuities with cash settlement options, annuities with guaranteed interest, and for settlement options on an issue year basis or change-in-fund basis. Sawczak’s contention that cash settlement options render these contracts non-exempt has no merit.

Moreover, each of Dr. Goldenberg's annuity contracts have a life insurance or death benefit feature in the event he does not survive to the annuity date. Due to the life insurance feature of each contract, the cash surrender value of these contracts is exempt under any construction of §222.14.

Sawczak's incorrectly asserts that the Trustee for Dr. Goldenberg's bankruptcy case owns the annuity contracts. Rather, the exemption issue under § 222.14 must be resolved before the Trustee has any interest in the annuities. The bankruptcy court deemed the contracts exempt from the estate owned by the bankruptcy trustee. Although the district court reversed, it stayed its mandate. The Eleventh Circuit even stated that Dr. Goldenberg is the Annuitant and Owner of these policies.

Sawczak ignores the plain words of the statute. Even if Dr. Goldenberg had surrendered his annuity contracts, the funds he would have received in exchange for the surrender are exempt because the proceeds of annuity contracts "*upon whatever form*" are exempt. Our legislature expressly includes "annuity contracts" within the statutory definition of "life insurance" under the Code. Thus, Sawczak's argument that there is a distinction between life insurance and annuity contracts for purposes of the exemption under § 222.14 has no merit. The legislative history of the 1978 amendment of § 222.14 shows that the addition of "annuity contracts" to § 222.14 was done to avoid unnecessary litigation. Under any construction of the statute, cash surrender value of an annuity contract is exempt.

REBUTTAL ARGUMENT

- I. The certified question should be answered in the affirmative: the cash surrender value of Dr. Goldenberg's annuity contracts is exempt under Fla. Stat § 222.14 (West 1998).**

Introduction:

The certified question turns on this Court’s interpretation of § 222.14. Sawczak recites unnecessary facts, and miscasts others [AB pp. 2-3].¹

It is beyond dispute that Dr. Goldenberg’s annuity contracts were purchased in 1989 with exempt pension funds, years before the existence of this creditor [R DC Doc 1 - p 4; AA ex. 6 - p 2]. Sawczak has not addressed Dr. Goldenberg’s contention that the four corners of each annuity contract evinces the parties’ intent to enter into an annuity contract [AA ex. 7(a) - 7(f); IB pp. 11-16]. Sawczak declines to mention that the annuity contracts also incorporate mortality tables, and provide for retirement income [E.g., AA - ex. (7)(b) - p 1,4; Record Excerpts ex. (7)(b) - p 1, 4]. On the other hand, Sawczak agrees that Dr. Goldenberg’s annuity contracts fall within the description of annuity contracts set out by our United States Supreme Court in *NationsBank of North Carolina v. Variable Annuity Life Ins. Co.*, 513 U.S. 251, 115 S.Ct. 810, 815, 130 L.Ed. 2d 740 (1995) [AB p. 34]. Nevertheless, Sawczak contends that the instant contracts are not annuity contracts [AB pp. 18 - 20]. Appellants disagree.

Section 222.14 Exempts Annuity Contracts:

Sawczak asks this Court to interpret § 222.14 in a manner that the Bankruptcy Court characterized as “strained” [AA ex. 6 p. 4] and that has not been approved by any court in the statute’s 22-year existence, suggesting that (a) the word “proceeds” applies only to annuity contracts (and not to life insurance), (b) the words “cash surrender value” applies

¹Throughout this Reply Brief, the abbreviation “AB” refers to Sawczak’s answer brief; the abbreviation “AA” refers to Appellants’ Appendix (followed by the specific exhibit therein and page number of the exhibit); and the abbreviation “IB” refers to Appellants’ Initial Brief.

only to life insurance policies (and not to annuity contracts), and (c) annuity contracts are not exempt, but only their proceeds are exempt [AB pp. 5, 11-13]. In support of her argument, Sawczak insists that the use of the word “proceeds” in § 222.13 must be read *in pari materia* with the word “proceeds” used in § 222.14, Florida Statutes, but that the word “proceeds” in § 222.14 is distinct and not to be read *in pari materia* with the words “cash surrender value” or the words “upon whatever form” in § 222.14 [Id]. Sawczak’s analysis ignores the fact that § 222.13 deals only with the exemption of proceeds of life insurance, does not deal with annuity contracts, and provides an exemption from the insured party’s creditors for the *beneficiary* of the insurance policy upon the death of the person whose life is insured. Section 222.14, on the other hand, provides the exemption both to the party whose life is insured, and to the beneficiary of the annuity contract.

Sawczak also suggests that the title of § 222.14 be afforded no weight, is not to be read *in pari materia* with the text of the statute, and ignores the fact that the legislature included “annuity contracts” within the statutory definition of “life insurance” in 1977. *See § 624.602, Florida Statutes*. As annuity contracts are subsumed within the definition of life insurance, there is no distinction between life insurance and annuity contracts for purposes of the exemption of cash surrender value under § 222.14.

Moreover, Dr. Goldenberg’s annuity contracts unquestionably provide for death benefits to one or more persons named as his survivors, and have multiple life insurance features.² Consequently, even if this Court were to follow Sawczak’s strained interpretation of § 222.14, the cash surrender value of Dr. Goldenberg’s annuity contracts is exempt under

²See Appellants’ Appendix, exhibits 7(a) pp. 11&14; 7(b) pp. 3, 8 &9; 7(c) pp. 11, 12 &16; 7(d) pp. 5 &13; 7(e) pp. 11 & 14; and 7(f) pp. 5, 7 & 8.

§ 222.14. *See Fla. Stat. § 624.602; Ch. 77-295, §1, Laws of Florida* (1977).

Disregarding the words “*upon whatever form*”, as well as the cases that interpret those broad words, Sawczak seeks to eliminate an entire class of annuity contracts from the exemption under § 222.14. As a practical matter, Sawczak’s interpretation of § 222.14 would turn the insurance industry on its head, severely limit the public’s ability to select the variety of annuity that meets their particular needs, and result in a flood of litigation over every variation contained in annuity contracts. Moreover, case law does not support Sawczak’s narrow construction that cash surrender values of annuities are attachable, while cash surrender values of life insurance are not. *See Zuckerman v. Hofrichter & Quiat, P.A.*, 646 So. 2d 187 (Fla. 1994) (monies paid under “surrender” of policy exempt); *Bank of Greenwood v. Rawls*, 158 So. 173, 174 (Fla. 1934) (check received in settlement of insurance policy is “proceeds” and not subject to garnishment) (emphasis supplied).

Sawczak’s reliance on *Western Casualty & Surety Co. v. Rotter*, 139 Fla. 854, 192 So. 78 (1939), is misplaced [AB p. 32]. Sawczak contends that *Western* stands for the proposition that any annuity with a cash surrender provision cannot be exempt. Appellants disagree. *Western* stands for the unremarkable and entirely different proposition that disability income is not exempt under the life insurance exemption when the disability policy is not surrendered. *See id.* Further, this Court’s 1939 analysis in *Western* did not have the benefit of the 1978 amendment to § 222.14, which added the exemption for annuity contracts. *See Laws of Florida 1978, c. 78-76 § 1*.

Sawczak mischaracterizes the 1920 derivative of § 222.13³ (which is not applicable

³ Ch. 4977, Laws of Florida (1920).

here) as the predecessor of § 222.14, Florida Statutes [AB pp. 14-17]. Section § 222.13 and its predecessor provisions are separate and distinct from § 222.14 and its predecessor provisions. *See Fla. Stat. § 222.13, Historical and Statutory Notes (West)* (showing § 4977, Rev. Gen. Stat. (1920) as “derivation” of § 222.13) and *Fla. Stat. § 222.14 Historical and Statutory Notes (West)* (showing c. 10154, Laws of 1925 as “derivation” of § 222.14). Sawczak acknowledges that the legislature enacted chapter 10154 of the Laws of Florida (1925) in response to *Morgan v. McCaffrey*, 286 F. 922 (5th Cir. 1923) [AB p. 15]. However, contrary to Sawczak’s contention, c. 10154, § 1 Laws of Florida (1925) was not an amendment of what is now § 222.13, but instead is the predecessor of the new and separate statute that is now § 222.14, Florida Statutes. *See Historical and Statutory Notes (West)* following § 222.13 and § 222.14. The separate exemption of the insurance policy’s cash surrender value created under chapter 10154, Laws of 1925 was for the person whose life was insured, whereas under the laws of Florida in existence at the time of *Morgan* (§ 4977, Rev.Gen.Stat. (1920)), only the death benefits of insurance policies were exempt. Consequently, Sawczak’s mischaracterization of § 222.14 and its predecessor provisions as an amendment of § 222.13 is important and should be rejected by this Court, as it appears to be an attempt to resurrect the common law distinction between death benefits (which were exempt under *Morgan*) and cash surrender value (which was not exempt), which was rejected and superceded by the statute enacted in response to *Morgan* - i.e., § 222.14’s predecessor, c. 10154, Laws of 1925.

The District Court's reliance on Levine is misplaced:

Sawczak requests this Court to adopt the U.S. District Court’s decision, which relies

on *Levine v. Weissing*, 134 F. 3d 1046 (11th Cir (Fla.) 1998) [AB pp. 18-19]. However, unlike the facts in *Levine*, here there is no conversion of non-exempt assets to exempt assets in the face of a known and existing creditor [see AA ex. 6]. It is undisputed that Dr. Goldenberg purchased the annuity contracts in 1989 with *exempt* pension assets years before the incident giving rise to Sawczak's claim [AA ex. 6 - p. 4] (emphasis supplied). Thus, *Levine* is inapplicable.

Settlement Options Do Not Affect An Exemption under § 222.14:

Insurance policies, including annuities, routinely contain multiple settlement options. Florida's Insurance Code regulates life insurance, the statutory definition of which expressly includes value guaranteed interest contracts, contracts with cash settlement options, annuities with cash settlement options, and annuities valued on a change in fund basis. *See Fla. Stat. §§ 625.121(5)(c); 625.121(5)(h)1. & 3.; 625.121(6)(a)2. & 4.; 625.121(6)(b)2., 3., & 5.* Thus, Sawczak's suggestion that a cash surrender value takes these annuity contracts out of the ambit of § 222.14 is without merit.

Sawczak also misapprehends this Court's decision in *In re McCollam*, 612 So. 2d 572 (Fla. 1993), when she states that annuity contracts themselves were not held to be exempt [AB pp. 21-23]. The word "annuity" was exhaustively analyzed by this Court in *McCollam*, and "the contract at issue" was found to be an annuity and therefore exempt under § 222.14 from creditor claims. *Id.* at 574. The *McCollam* decision went on to state that "if the legislature intended to exclude any particular type of annuity contract, it would have included such restrictive language when the statute was amended to include annuity contracts". *Id.* As Florida's Insurance Code expressly provides for annuity and life

insurance contracts with cash settlement options, there is no basis to conclude that the legislature intended to exclude the type of annuity contracts at issue here from the exemption from forced process provided under § 222.14. *See, e.g., § 625.121(5) & (6); In re McCollam*, 612 So. 2d at 574.

The Guiding Principles for Reviewing Annuity Contracts:

Sawczak overlooks the plain language of these formal commercial contracts, which unmistakably evince the parties' intent to enter into annuity contracts. [See IB "Introduction" at pp. 11 - 16 (describing each annuity contract); AA ex. 7(a) - 7(f)]; *In re Solomon*, 95 F.3d 1076, 1078 (11th Cir. (Fla.) 1996) (looking to intent). To undercut the fact that the annuity payments to Dr. Goldenberg are to commence upon a mere lapse of time, Sawczak inaccurately suggests that the Trustee for Dr. Goldenberg's bankruptcy case owns these annuity contracts [AB p. 38]. If Sawczak is correct (she is not), the Eleventh Circuit would have resolved this case on federal bankruptcy law, without certifying the statutory interpretation of § 222.14 to this Court. In any event, the bankruptcy court deemed the annuity contracts exempt, and a stay was imposed on the district court's opinion [AA ex. 6; AA ex. 5]. Moreover, the Eleventh Circuit's certification opinion states that Dr. Goldenberg is the annuitant and owner of each annuity. *See In re Goldenberg*, 218 F 3rd 1264, 1265 (11th Cir. (Fla.) 2000). Under any circumstances, the exemption under § 222.14 must first be determined before the Trustee acquires an interest.

Sawczak's reliance on the stayed district court opinion is misplaced [AB pp. 18-19]. The district court erred by ruling that the payment stream must commence prior to an annuity qualifying for an exemption under § 222.14 [R DC Doc 21 - p 3; AA ex. 4 - p 3]. The

Eleventh Circuit declined to adopt the district court's opinion.

Sawczak also disregards obligation under each of the annuity contracts for the respective annuity company to make annuity payments based on mortality predictions. *See NationsBank*, 115 S. Ct. at 815 (defining and describing annuity contracts); *Securities and Exchange Comm'n v. Variable Annuity Life Ins. Co. of Amer.*, 359 US 65, 69-70, 79 S.Ct. 618, 3 L.Ed. 2d 640 (1959) (describing features of annuity contracts). The issuer of the annuity contracts assumed the risk of mortality from the moment of issuance based on an actuarial prediction that a certain number of annuitants will survive to specific ages. *See id.*

Sawczak's also misapplies the old maxim *expressio unius est exclusio alterius* [AB p. 10]. In doing so, Sawczak disregards the words "upon whatever form", as well the Legislature's inclusion of the statute's title within the text of what was being enacted (emphasis supplied). *See ch. 78-76 Laws of Florida (1978), §1*; [AB p. 16]. A maxim must not be applied to defeat the manifest purpose and intent of a provision of law. *See Smalley Transp. Co. v. Moed's Transfer Co.*, 373 So. 2d 55 (Fla. 1st DCA 1979) (discussing inapplicability of maxim). By including the phrase "upon whatever form", as well a the title of § 222.14 itself in the 1978 amendment, this is not an instance where mention of one thing implies the exclusion of another. Rather, use of the broad and expansive words "upon whatever form" are dispositive. *Zuckerman*, 646 So. 2d at 188; *Bank of Greenwood*, 158 So. at 175 (the "cash surrender value" as contemplated by § 222.14 is not limited to such cash surrender value as can be demanded and legally enforced against an unwilling insurance company according to the usual significance of the term "cash surrender value" as that term is ordinarily used in the law of insurance strictissimo verbis) (emphasis in the original).

Sawczak also mischaracterizes the title of § 222.14 as an unpersuasive "catch phrase"

[AB p. 23-24], relying on cases decided *prior* to this Court's ruling that statutory titles indeed are persuasive. *State v. Webb*, 398 So. 2d 820 (Fla. 1981) (so stating).

Ignoring the statutory definition of the term "proceeds" set out in Fla. Stat. § 679.306(1), Sawczak points to extraneous statutes in an attempt to distinguish life insurance from annuities [AB pp. 12, 32 - 34]. Not only does the statutory definition of life insurance include annuities, the various statutory provisions cited by Sawczak actually support Dr. Goldenberg's position. For example, § 627.482, Fla. Stat., makes no distinction between life insurance policies and annuities for purposes of regulating the interest payable on the cash surrender of a policy. Likewise, § 631.171, Fla. Stat., makes no distinction between life insurance and annuity contracts as to claims against insurers domiciled in other states. Section 717.107, Fla. Stat., expressly pertains to funds owed under life insurance policies, and it treats annuity contracts and life insurance the same for claiming funds owed. Similarly, § 631.271, Fla. Stat., treats life insurance and annuity policies the same for prioritizing claims. Therefore, there is no meaningful distinction to be made under the statutes cited by Sawczak.

Sawczak's reliance on *In re Williams*, 222 B.R. 662 (Bankr. S.D. Fla 1998), is misplaced [see AB at p. 38]. *In re Williams* is inapplicable because it involves a joint bankruptcy of a married couple, who claimed an insurance policy on the husband's life as exempt under § 222.14, the death of the husband within the 180-day post petition statutory time frame under § 541(a)(5) of the bankruptcy code, and the failure of the wife to properly amend her bankruptcy schedules to claim an exemption of the death benefits under § 222.13(1), Florida Statutes. Section 222.13 exempts life insurance proceeds from forced process by creditors of the person whose life is insured, so as to afford the greatest benefit

to the surviving spouse and children of the insured. In any event, the Eleventh Circuit rejected Sawczak's argument, concluding that this case involves an *unanswered question* of state law that is determinative of this appeal. **Goldenberg**, 218 F. 3rd at 1266.

As to the exemption of annuity contracts under § 222.14, had the legislature intended the narrow construction urged by Sawczak, it would have placed the annuity exemption within § 222.13, which protects life insurance proceeds that have been paid to a beneficiary after the death of the insured, rather than in § 222.14. Notably, the legislature chose to provide the broadest exemption under § 222.14 by employing the words “upon whatever form” to cover all forms and manner of payment under annuity contracts. *See Zuckerman; Greenwood*.

Adopting Sawczak's argument, rather than following the existing precedent of *Greenwood, Zuckerman* and *McCollam*, would render an entire class of annuity contracts subject to forced process, and render § 222.14's use of the words “upon whatever form” meaningless. It would also ignore the legislature's 1977 amendment of the statutory definition of life insurance to include annuity contracts, its effort to treat annuities the same as life insurance for purposes of the exemption under § 222.14, and its goal to avoid litigation. § 624.602, *Fla. Stat.*; *Judiciary Committee Staff Report on HB 153* [AA ex. 8 - p 4]. If Sawczak's interpretation is adopted, there will likely be a flood of litigation parsing the myriad of possible variations of payment under annuity contracts, and produce a result that is demonstrably at odds with the intention of the drafters of § 222.14. *United States v. Ron Pair Enter., Inc.*, 489 U.S. 235, 242, 109 S.Ct. 1026, 1031, 103 L.Ed.2d 290 (1989) (plain meaning conclusive, except where literal application of statute will produce result

demonstrably at odds with intentions of drafters).

Sawczak’s attempt to distinguish the defined terms “Owner” and “Annuitant” is of no avail [AB at pp. 36 - 37]. Under each annuity contract, Dr. Goldenberg has a right to receive periodic or monthly installments for a term of time. *See McCollam* (right to payments dispositive). Each annuity company determines the annuity payments actuarially with respect to lives of one or more persons. *See NationsBank*, 115 S.Ct. at 815 (discussing annuities); *Variable Annuity Life Ins. Co. of Amer.*, 79 S.Ct. at 619-622. (discussing actuarial principles of annuities). Each of Dr. Goldenberg’s annuity contracts is in part based on the actual life of the Annuitant (Dr. Goldenberg), and places the obligor and Annuitant in a position where they are each taking certain actuarial risks. *Id.* The right of one annuity company to purchase a separate annuity contract to fund annuity payments is merely a means to fulfill its payment and other contractual obligations under that annuity contract [AB p. 38; AA ex. 7(b) -10]. *See McCollam* (annuity contract exempt irrespective of means of funding); *Meyer*, 81 S.Ct. at 212 (dividing proceeds does not turn proceeds into two properties); § 625.121(6)(b)2 (expressly describing weighting factors for annuities involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options).

The Legislative History of § 222.14:

Sawczak argues that the legislative history of § 222.14 should be ignored [AB pp. 28 - 29]. This argument has no merit, as this Court looked to the amendment of § 222.14 in *McCollam* when stating “[if] the legislature intended to limit the exemption to particular annuity contracts, it would have included such restrictive language when the statute was amended to include annuity contracts.” 612 So. 2d at 574. Sawczak contends that her

reading of the statute will encourage those purchasing annuity contracts to do so without a cash surrender feature so that in a moment of temptation the retirement nest egg is not squandered [AB p. 40]. Debtor disagrees. If Sawczak's suggestion is followed, it will interfere with contract rights of parties, undermine the manner in which issuers fund payment obligations to their annuitants, and wipe out the statutory right to issue policies with cash surrender value as a feature. Sawczak also urges the exemption to be limited to so called "immediate annuities" [AB p. 33]. Debtor disagrees. Sawczak's suggestion will undermine the functional purpose of providing retirement income to those who purchase annuity contracts. Typically an "immediate annuity" is purchased when a personal injury structured settlement is at issue. *E.g., McCollam*. In contrast, deferred annuities accumulate earnings to provide for retirement income payable at a later date. To parse a distinction in the exemption law on the basis Sawczak argues will effectively eliminate annuity contracts as a means to provide for a later retirement.

As the statutory term "life insurance" includes annuities, logic dictates that the legislature intended to expand the scope of § 222.14 to the same extent that it expanded the insurance code's definition of "life insurance."

The Title of § 222.14 is Instructive:

Sawczak characterizes the title of the statute as a catch-phrase, asks this Court to ignore it, relies on the "stop and frisk" and "single subject" law, and makes a "statutory enlargement" argument [AB at 23-25 and 25-27]. Appellant disagrees. As the bankruptcy court correctly pointed out, the title of § 222.14 refers to "annuity contracts" and neither the title nor text of the statute distinguish the proceeds received from the surrender of the annuity contract from the proceeds received after the contract is annuitized. With the title indicating

the legislature's intent to exempt the cash value of annuity contracts, there is no basis to distinguish cash value of an annuity contract from proceeds of an annuity contract for purposes of the exemption. *See ch. 78.76 § 1, Laws of Florida* (1978); *Webb*.

The Plain Meaning of the Term "Proceeds" Encompasses Cash Value:

Sawczak declined to acknowledge the plain meaning of the term "proceeds". **See Blacks Law Dictionary, Fourth Edition**, p. 1369 (West 1968). Here, any cash value of the annuity contract is a yield, produce or income on money or thing of value arising from payment of a single premium in exchange for a bundle of rights under the annuity contracts. Moreover, the word "proceeds" must be considered in *pari materia* with the words "upon whatever form". *See § 222.14*. The plain meaning of the term "whatever" is "[e]verything or anything", "[no] matter what", "[o]f any number or kind: Any", "[t]he whole of: all of", and "[o]f any kind at all". *Websters II New Riverside University Dictionary*, p. 1312 (1984). With use of such broad language, it is clear that the legislature intended §222.14 to embrace virtually all forms of proceeds including cash surrender value. *See Greenwood; Zuckerman*. Accordingly, proceeds of annuity contracts are exempt whether they are in the form of a stream of payments, a lump sum, settlement in exchange for surrender of the contract or otherwise. *Zuckerman*, 646 So. 2d at 188.

This Court should reject Sawczak's suggestion that the timing of payment controls the exemption. Any check or draft issued on surrender and settlement of an insurance policy deposited in the judgment debtor's bank account has been characterized by this Court as "proceeds". *Greenwood*, 158 So. at 174. Logic dictates that a settling insurance company issues a check when paying on an annuity contract, not a valise of cash. Even if payment were in the form of cash, it would still constitute proceeds "upon whatever form". *See id.*

Accordingly, any check(s) or payments received by Dr. Goldenberg under the seven annuity contracts here are exempt “proceeds” of his annuity policies. *Id.*

Sawczak has not addressed Dr. Goldenberg’s argument that other statutes that define the term “proceeds” lend guidance. *See McCollam*, 612 So. 2d at 574 (looking to other statutes for guidance because the Legislature did not define the term annuity contract); *Fla. Stat. § 679.306(1)* (“money, checks, deposit accounts, and the like . . .”). Instead Sawczak cites to statutes that generally treat annuity contracts and life policies the same for purposes of the particular legislation. All of the statutes cited by Sawczak support Dr. Goldenberg’s position that there is no meaningful distinction between life insurance and annuities for purposes of an exemption under § 222.14. That being so, the certified question should be answered in the affirmative.

CONCLUSION

Dr. Goldenberg’s annuity contracts fall within the plain meaning of annuity contracts under § 222.14. Each contract, any value, and all payments thereunder, upon whatever form, are exempt under § 222.14 from creditor claims. This Court should answer the certified question in the affirmative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and authentic copy of the foregoing Reply Brief has been furnished via U.S. Mail, postage prepaid, to **Jack F. Weins, Esq.**, Attorney for Chapter 7 Trustee/Co-Appellee, ABRAMS ANTON, P.A., One Boca Place, Suite 411-E, 2255 Glades Road, Boca Raton, FL 33431; **Timothy J. Norris, Esq.**, Attorney for creditor/Appellee Shirley Sawczak, Buchanan Ingersoll Professional Corporation, NationsBank Tower, 100 SE Second Street, Suite 2100, Miami, Florida 33130; **Herman J. Russomanno, Esq. and Robert J. Fiore, Esq.**, Co-Counsel for creditor/Appellee, Shirley Sawczak, RUSSOMANNO FIORE & BORRELLO, P.A., Museum Tower, Suite 2101, 150 W. Flagler Street, Miami, FL 3300130; all this 11th day of October, 2000

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