SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

SUSAN EDWARDIA OSTROW 2853 Ontario Road NW, Apt. 511 Washington, DC 20009 Plaintiff, v. **ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA** 5701 Golden Mills Drive Minneapolis, MN 55416 Defendant.	)))))))))))))))	CIVIL ACTION NO. 0007621-09 1. Violation of D.C. Consumer Protection Procedures Act – deception and misrepresentation 2. Violation of D.C. Consumer Protection Procedures Act – breach of implied warranty of merchantability

ORIGINAL COMPLAINT

NATURE OF ACTION

1. Plaintiff, Susan Edwardia Ostrow, brings this representative action on behalf of the general public of the District of Columbia to halt and remedy the harm caused by Allianz Life Insurance Company of North America's (hereinafter "Allianz") systematically unfair, fraudulent and unlawful sales practices in connection with its solicitation, offering and sale of fixed and equity-indexed deferred annuity products to residents of this District without first disclosing all material facts, costs and risks associated with these annuity products.

2. For example, Allianz's misrepresentations and omissions of material fact include, *inter alia*, (1) that Allianz deferred annuity products provide "safety of principle" and/or "no risk of loss;" (2) that Allianz deferred annuity products contain no sales charges, loads, expenses or fees; (3) that 100% of premiums begin earning interest immediately; (4) that first year interest rates and bonuses boost accumulation values; (5) that the high agent commissions, charges and costs associated with these products adversely effect their values and performance; (6) that, from day one, deferred annuity purchasers policy values start off in the negative as a result of costs and withdrawal charges that are immediately imposed on policy values and recouped by the Company over the surrender period; (7) that purported bonus features and initial teaser interest rates are illusory marketing gimmicks and are also recouped by the Company during the surrender period; (8) that certain products contain a market value adjustment feature that has an undisclosed bias built into the formula; (9) that the bonus feature provided on Allianz two-tiered annuity products is illusory; and (10) that the actual value of Allianz annuity products at the time of their purchase is significant less than their purchase price.

3. In addition to their uniform omissions of material facts and false advertising concerning Allianz's deferred annuity products applicable to all consumers regardless of age, Defendant targets senior citizens as prospective purchasers of deferred annuities even though they are unlikely to receive any benefit because of the long-term nature of deferred annuity products. Indeed, lengthy surrender periods, high surrender charges and penalties for early withdrawal, illusory bonus features, teaser rates, endorsements and other product features do not benefit senior citizen purchasers based on their actuarial life expectancy or financial needs.

4. Defendant's agents also systematically solicit, market and sell deferred annuities to seniors, using fraudulent and deceptive sales tactics and methods, such as offering "free" financial and estate planning advice or "senior financial survival workshops," and other means to induce their trust, obtain personal financial information, and persuade them to convert their savings and other investments such as stocks, bonds, mutual funds, 401(k)'s, 403(b)'s, IRAs, CDs, and life insurance policies into deferred annuities.

5. Deferred annuities are a different product than traditional annuities (also known in the insurance industry as an "immediate annuity"). An annuity is the reverse of life insurance in that life insurance pools the risk of a premature death, while annuities pool the risk of living beyond the annuitant's life expectancy. When a consumer purchases a traditional annuity, the consumer typically acquires, in exchange for an up-front payment, the right to a stream of periodic payments from the insurer that is guaranteed to continue for as long as the annuitant is alive. This type of annuity can provide comfort and protection for persons who are afraid that they may outlive their assets. To find the best deal, consumers can shop for an annuity that provides the highest benefits in comparison with the premium paid in, also taking into consideration, the fact that the financial strength of the issuing life insurance company is the sole basis of its payment guarantee. This traditional fixed annuity is known as an "immediate annuity" because annuity payments to the contract owner (or purchaser) begin immediately after tender of the premium to the insurer.

Fixed vs. Equity-Indexed Deferred Annuities.

6. In contrast to an immediate annuity, a deferred annuity – the type of annuity at issue in this complaint – is an accumulation product. As a leading authority has commented:

> It is important to keep in mind that there are two different products called "annuities" offered by the insurance industry, and they have very little in common. The first such product, the deferred annuity, is basically an investment vehicle. Deferred annuities . . . have settlement options which provide a periodic income, but the settlement options are most often not elected and almost never play an important part in the purchase or selection of a particular deferred annuity.

Albert E. Easton and Timothy F. Harris, Actuarial Aspects of Individual Life Insurance and Annuity Contracts (ACTEX Publications 1999) at p. 20.

7. With a deferred annuity, the purchaser invests money and expects the value of the account to grow (depending on the performance of the investment vehicle that is chosen) prior to using the accumulated account assets during retirement. Additionally, within a deferred annuity, there are usually a limited number of investment options. Specifically, when a fixed account funds a deferred annuity, the purchaser receives from the insurer an interest rate on the amount of premiums paid into the product by the purchaser. The insurer may contractually agree to a particular rate for a period of time, but generally adjusts the rate at its discretion. In the case of Allianz's deferred annuities, the Company gives the annuitant two options: to invest in a fixed account guaranteeing a minimal rate of interest return; or, an account whose rate of return is dictated by a specific stock market index, *e.g.*, Dow Jones Industrial Average, Standard &

Poor's Composite Stock Index, *etc.*[1] Once the deferral period expires, a policyholder may elect to annuitize the contract (surrender ownership of the premiums to the insurance company) in exchange for a stream of income over time.

8. Because of the deferral period, annuity issuers, like Allianz, are able to pay sales agents higher commissions for selling deferred annuities than for immediate annuities. To recoup the commissions paid and other costs and expenses, however, insurers impose significant surrender penalties on deferred annuities to prevent policyholders from withdrawing the premiums deposited prior to the expiration of the deferral period. In short, the amount of the commission paid to the sales agent for a deferred annuity is directly correlated to the duration and amount of the surrender penalty. In that regard, the Allianz deferred annuities at issue in this action typically impose substantial surrender charges and/or penalties upon the withdrawal of any portion of the initial investment or accrued interest within its first 10-15 years which severely limits an annuitant's access to his or her funds.

One-Tiered vs. Two-Tiered Annuities.

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[1]This latter type of deferred annuities is referred to in the insurance industry as an "equity-indexed" annuity. In 2004, equity-indexed annuities accounted for over 75% of Allianz's U.S. annuity sales. However, all deferred annuity products underwritten by Allianz provide for the repayment of the invested principal amount upon the annuity's maturity, together with any earned accumulated interest – which amount is determined by the particular interest accrual vehicle selected by the annuitant at the time of purchase, *e.g.*, fixed or equity-indexed. According to the National Association of Securities Dealers ("NASD") and well recognized industry publications, equity-indexed annuities are generally considered more risky in terms of their ability to ensure the annuitant receives more than just the return of annuity's initial principal investment upon its maturity. This is because the guaranteed minimum return for an equity-indexed annuity is typically only 90% of the initial premiums paid, and these type of annuities also generally have higher surrender charges and longer surrender and maturity periods than deferred annuities.

9. Historically, virtually all equity-index annuities have been classified as one-tiered deferred annuity products. An individual who is invested in a one-tiered equity-index annuity does not have to annuitize the product in order to receive positive index returns from market indices. The value of the one-tiered equity-index annuity is generally subjected to surrender penalties that decrease over time.

10. If a one-tiered equity-index annuity offers a premium bonus, the bonus is credited to the value of the account immediately and the policyholder is eligible to receive some or all of the bonus even if the policyholder elects not to annuitize. A policyholder who elects to surrender the policy prior to the expiration of the surrender penalty period, however, will receive the amount of the bonus less the applicable surrender penalty. Likewise, if a policyholder surrenders the policy after the expiration of the surrender penalty period, he or she, in theory, will receive the full value of the bonus even if the policy is not annuitized.

11. A two-tiered equity-index annuity is fundamentally different from a one-tiered equity-index annuity.[2] In a two-tiered deferred annuity, the "interest rate" credited to the annuity varies depending on whether the policyholder elects to annuitize the policy. If a policyholder elects not to annuitize the policy, the policyholder is only entitled to receive a lower interest rate on the premiums paid. The value accruing at the lower interest rate is commonly referred to as the "Cash Value." By contrast, if a policyholder elects to annuitize (surrender ownership of the money to the insurance company) and receive a series of annuity payments paid over a period of time, the policyholder will

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[2] Among the most prevalent two-tiered equity-index annuities marketed and sold by Allianz were the Bonus Maxxx, Bonus Maxxx Elite, Bonus Dex, Bonus Dex Elite, InFini Dex 10, MasterDex 10 and 10% Bonus PowerDex Elite.

receive a higher rate of interest. The value accruing at a higher interest rate is commonly referred to as the "Annuitization Value." The annuitization requirement in a two-tiered equity-index annuity distinguishes it from a one-tiered equity-index annuity.

12. Another feature that distinguishes a two-tiered equity-index annuity from a one-tiered equity-index annuity is that the Cash Value is subjected to an indefinite non-declining surrender penalty (as opposed to a declining surrender penalty in a one-tiered equity-index annuity) if the policyholder elects not to annuitize the product.

13. In a two-tiered equity-index annuity, the "higher interest rate" credited to the Annuitization Value is tied to market indices such as the S&P 500 or the NASDAQ 100. If a two-tiered equity-index annuity offers a premium bonus, the bonus is also credited to the Annuitization Value of the policy. Therefore, if a two-tiered equity-index annuity offering a premium bonus is not annuitized, the policyholder will only receive the Cash Value and not only loses the positive index returns accruing in the Annuitization Value and the entire premium bonus, but is also subjected to an indefinite surrender penalty on the Cash Value.

14. Based on the foregoing, therefore, a premium bonus credited to a one-tiered equity-index annuity can be received "immediately" or "upfront" while a premium bonus credited to the Annuitization Value of the two-tiered equity-index annuity can never be received "upfront" or "immediately" because the premium bonus can only be received if the policy is annuitized after the expiration of the deferral period (usually many years, if ever). Indeed, the only way that a policyholder can receive an "upfront" or "immediate" premium bonus in a two-tiered equity-index annuity is if the bonus is credited to the Cash Value of the policy rather than the Annuitization Value.