

ANNUITIES COST ELDERS BILLIONS, LAWSUIT ALLEGES

Annuities Cost Seniors Billions, Suit Says

ABSTRACT

LOS ANGELES - John Migliaccio was retired and 73 when he and his wife, Carmen, paid \$43,000 for a deferred annuity from Midland National Life Insurance Co.

What they didn't realize was that the annuity wouldn't pay out until 2045 - when John turned 115.

Migliaccio's attorney, William Shernoff, alleged in an elder-abuse suit filed Monday that Midland and other insurers increasingly have made a practice of selling annuities to senior citizens who won't live to see the benefits. The scheme is costing seniors billions of dollars, Shernoff added.

"It's alarming to me that the maturity date is so far out in the future," said Shernoff of Claremont's Shernoff Bidart & Darras, who filed the suit as a proposed class action. "It's illusory. No one's going to live that long to collect the annuity payments."

Chris Helton, manager of Midland's consumer affairs department, said he could not comment because he hadn't seen the suit.

Shernoff said that not only do the annuities mature well after a normal life expectancy but that seniors can't withdraw their money out early without incurring punishing surrender charges.

"Many times, seniors need to access their money for health care or other emergencies," he said, "but are hampered in doing so by penalties and surrender charges."

Shernoff is seeking return of premiums paid for the annuities. He believes the class with claims against Midland alone could exceed 10,000 seniors.

Citing the insurer's annual report, Shernoff said Midland's 760,000 policyholders nationwide had \$76.9 billion of insurance as of December 2003. Between 1999 and 2003, Midland's annual annuity sales grew from less than \$107 million to more than \$2 billion, according to the complaint.

"And this is just one company," Shernoff said. "We're continuing to investigate, and from what we've seen so far, it looks like there are other companies that do this. It could involve billions of dollars. This is just the tip of the iceberg."

California Department of Insurance spokesman Jason Kimbrough said the department has the issue "on its radar" and is currently looking to establish state suitability standards for variable annuities.

"The department always seriously investigates allegations of senior financial abuse," Kimbrough said. "It is certainly a major concern of ours."

Although he declined to comment on any specific investigation, he said the department generally has gotten quick refunds from individual corrupt brokers and agents.

"Our experience has been more on the side of rogue agents than an institutionalized scam," he said. "But that's not to say there isn't an institutionalized problem with some companies."

Shernoff said the company, not any rogue agent, put the terms of Migliaccio's annuity in writing.

"The company can't argue that it's some rogue agent because it's in the policy," he said.

Suitability and misrepresentation complaints surged in the late 1990s and early 2000s.

During the Internet-fueled market rise of the previous decade, millions of conservative or first-time investors, who had grown weary of watching their neighbors get rich seemingly overnight on can't-miss technology stocks and variable annuities, decided to step into a game few knew how to play.

"There's an old maxim that says a rising tide lifts all ships," said one brokerage regulator who asked not to be identified. "But there's another that says a fool and his money are soon parted. People didn't even know what Yahoo did, but that didn't stop them from buying it at \$250 a share."

When the bubble finally burst, gutting once-healthy retirement accounts and college funds, many were left with nothing.

Brokers took the brunt of the backlash from buyers, who complained they had trusted their agents to steer them into suitable investments given their age, financial objectives and risk aversion. Other buyers argued their brokers had come to them with exciting, sure-fire annuity products but failed to fully explain the fine print.

"We were only doing what they wanted," one anonymous broker said.

Shernoff, however, said he remains confident that a court will see the crime in selling annuities to elderly clients who will never live to see them pay off.

"You can get all kinds of waivers you want, but it's like taking a 90-year-old to the top of a huge ski hill," he said. "He may have signed some waiver, but the fact is he shouldn't be up there in the first place."