

Life and Annuity Series: Annuity Cases—Good 9th Circuit Decision

AUGUST 24, 2015

The August 2015 decision from the 9th Circuit, titled *Eller v. EquiTrust Life Ins. Co.*, provides helpful precedent for the defense of annuity sales practice cases.

Plaintiff Eller brought a RICO class action alleging, among other things, that EquiTrust fraudulently sold him a bonus index annuity. EquiTrust promised that it would pay a 10% premium into the annuity up front, without disclosing that it would essentially recoup that "bonus" over time by crediting lower index amounts to plaintiff's account. The 9th Circuit affirmed the dismissal of this claim—an unremarkable decision based on earlier "bonus annuity" precedents.

What is remarkable is the court's recognition of a "settled premise": a seller of annuity contracts "has no duty to disclose internal pricing policies or its method for valuing what it sells," absent a fiduciary relationship. As a result, EquiTrust had no duty as a matter of law to disclose that plaintiff's index annuity might be paid lower credits over time than would have been available in an alternative product without the upfront bonus. Instead, EquiTrust "delivered precisely what it promised." It credited a 10% premium up front, increasing plaintiff's accumulation value and permitting he withdrawal of more money without a surrender charge than would otherwise have been possible.

This decision offers guidance as well for cases challenging revenue sharing, sponsorship fees, contingent commissions and similar practices, as they are arguably all part of an insurer's internal pricing structure. The DOL's proposed "conflict of interest" rule could affect this precedent in cases involving retirement money, as it would create a fiduciary duty for sellers of annuities.