

MEYER  
HENDRICKS  
PLLC  
ATTORNEYS AT LAW

MICHAEL K. JEANES, CLERK  
RECEIVED CCC #1  
RIGHT REPOSITORY

09 JUN 30 PM 7:11

3101 N. Central Avenue 1  
Suite 800  
Phoenix, Arizona  
85012  
Telephone  
602-604-2100  
Facsimile  
602-263-5333

2 Ed Hendricks, Jr., State Bar No. 016539  
3 Scott Mihalik, State Bar No. 026838  
4 MEYER HENDRICKS PLLC  
5 3101 N. Central Avenue, Suite 800  
6 Phoenix, Arizona 85012  
7 (602) 604-2100  
8 ehendric@meyerhendricks.com  
9 smihalik@meyerhendricks.com

6 Paul A. Conant, State Bar No. 012667  
7 THOMSON CONANT, PLC  
8 2398 E. Camelback Road  
9 Phoenix, Arizona 85016  
10 (602) 508-9010  
11 paulconant@thomsonconant.com

12 Attorneys for Plaintiffs

13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
14 **IN AND FOR THE COUNTY OF MARICOPA**

CV 2009-021251

13 THOMAS E. CANDIOTTI, an individual;  
14 THOMAS E. CANDIOTTI SEPARATE  
15 PROPERTY TRUST dated 1/28/99, by,  
16 through and on behalf of its trustee, THOMAS  
17 E. CANDIOTTI; THOMAS E. CANDIOTTI  
18 IRREVOCABLE TRUST dated 5/19/04 by,  
19 through and on behalf of its trustee, ROCKNE  
20 A. LUCIA, JR.; the 2007 THOMAS E.  
21 CANDIOTTI IRREVOCABLE TRUST dated  
22 7/23/07 by, through and on behalf of its  
23 trustee, ROCKNE A. LUCIA, JR.,

CASE NO.

COMPLAINT

Plaintiffs,

v.

21 MERRILL LYNCH, PIERCE, FENNER &  
22 SMITH INCORPORATED, a Delaware  
23 corporation; MERRILL LYNCH & CO., INC.,  
24 a Delaware corporation; MERRILL LYNCH  
25 INSURANCE GROUP, a Delaware  
26 corporation; TODD STOTTLEMYRE, and  
JANE DOE STOTTLEMYRE, husband and  
wife; JOHN CHARLES MATHIESON and  
SHERRIE SUCHER-MATHIESON, husband  
and wife; PACIFIC LIFE INSURANCE  
COMPANY, a Nebraska corporation; AI

FILED  
BY *Kkeel*, DEP  
PAID  
11071065  
\$306.00

Service

1 CREDIT CORPORATION, a Delaware  
2 corporation; JOHN/JANE DOES I-X; ABC  
3 PARTNERSHIPS I-X; ABC LIMITED  
LIABILITY COMPANIES I-X; and ABC  
CORPORATIONS I-X,

4 Defendants.

5 Plaintiffs Thomas E. Candiotti ("Candiotti"), an individual; the Thomas E.  
6 Candiotti Separate Property Trust dated 1/28/99 (the "Revocable Trust"), by, through, and  
7 on behalf of its trustee, Candiotti; the Thomas E. Candiotti Irrevocable Trust dated  
8 5/19/04, by, through, and on behalf of its Trustee Rockne A. Lucia, Jr. ("Lucia"); the  
9 2007 Thomas E. Candiotti Irrevocable Trust dated 7/23/07, by, through, and on behalf of  
10 its trustee, Lucia (collectively the "ILIT"), through undersigned counsel, hereby assert the  
11 following allegations and claims against the Defendants identified herein:

12 **(Parties, Jurisdiction and Venue)**

13 1. Plaintiff Candiotti is and was at all material times a resident of Maricopa  
14 County, Arizona. During all material times, he was a customer of Merrill Lynch, Pierce,  
15 Fenner & Smith, Incorporated ("MLPFS"), Merrill Lynch & Company, Inc. ("ML") and  
16 Merrill Lynch Insurance Group, Inc. ("MLIG")(at times collectively referred to as  
17 "Merrill Lynch"). In 2004, he became the insured under a Pacific Life Insurance  
18 Company ("Pac Life") life insurance policy, described more fully below.

19 2. The Plaintiff Revocable Trust, by, through and on behalf of its trustee,  
20 Candiotti, hereby brings this action. The Revocable Trust was formed on January 28,  
21 1999, and was amended and restated on April 22, 2004, and on July 23, 2007. The  
22 Revocable Trust, as amended and restated, is a revocable trust formed in Maricopa  
23 County, Arizona, and Candiotti is the trustor and trustee. The Revocable Trust signed a  
24 control agreement with AI Credit Corporation ("AI Credit") that provides that that lender  
25 has certain rights to use assets that the Revocable Trust maintains in an account at Smith  
26

1 Barney to satisfy obligations under the premium financing agreement described more  
2 fully below.

3 3. Plaintiff ILIT are two irrevocable insurance trusts formed for the purpose of  
4 holding an insurance policy as part of Candiotti's overall estate plan. Candiotti is the  
5 trustor of the ILIT. Lucia is the trustee of the ILIT and brings action by, through and on  
6 behalf of the ILIT. The first irrevocable insurance trust was formed on May 19, 2004 in  
7 Maricopa County. The second irrevocable insurance trust was formed on July 23, 2007 in  
8 Maricopa County. The ILIT currently holds a Pac Life policy (described below).

9 4. Defendants MLPFS, ML and MLIG are and were at all material times  
10 financial services companies providing a wide range of investment services in Maricopa  
11 County, Arizona, through their representatives to their customers, including advice  
12 concerning estate planning and insurance products. In fact, MLPFS and ML marketed its  
13 wide range of services through a marketing campaign called "Total Merrill." In addition,  
14 Merrill Lynch solicited customers using the Total Merrill package through a group of  
15 Merrill Lynch employees and/or agents referred to as the Stottlemyre Group ("Stottlemyre  
16 Group").

17 5. Defendant Todd Stottlemyre was at all material times a resident of Arizona  
18 and was licensed to sell insurance in the State of Arizona. Upon information and belief,  
19 he is and was, at all material times, married to Jane Doe Stottlemyre and was acting on  
20 behalf of the marital community, to the extent that there is such a community. During all  
21 material times, Stottlemyre acted as the financial advisor for Candiotti and the trusts  
22 identified herein. As such, he owed them a duty to act as a reasonable and prudent  
23 financial adviser concerning advice and recommendations he rendered regarding  
24 Candiotti's estate plan and insurance needs. Upon information and belief, Stottlemyre  
25 was authorized, at all material times, to sell Pac Life policies through an agreement  
26

1 between Merrill Lynch and Pac Life. Upon information and belief, Stottlemyre is no  
2 longer a member of FINRA.

3 6. Upon information and belief, Defendant John Charles Mathieson  
4 ("Mathieson") was at all material times a resident of Connecticut and licensed to sell  
5 insurance in the State of Arizona. Upon information and belief, he is and was at all  
6 material times married to Sherrie Sucher-Mathieson and was acting on behalf of his  
7 marital community, to the extent that there is such a community. During all material  
8 times, Mathieson acted as an insurance and wealth planning specialist for Candiotti and  
9 the trusts identified herein. In fact, during all material times, Mathieson held himself out  
10 to the public (including to Candiotti and the trusts) as an estate planning insurance  
11 specialist at Merrill Lynch. Merrill Lynch also held Mathieson out as a specialist in estate  
12 planning and insurance. Merrill Lynch touted him as being able to recommend  
13 improvements "and new ideas for clients to better manage estate tax liabilities and pass  
14 more assets to their heirs."

15 7. Upon information and belief, Stottlemyre and Mathieson were agents and/or  
16 employees of Merrill Lynch, whose acts and/or omissions described herein are imputed to  
17 Merrill Lynch. In addition, Stottlemyre and Mathieson were acting within the course and  
18 scope of their employment concerning all acts described herein. As a result, Merrill  
19 Lynch is vicariously liable for all of Mathieson and Stottlemyre's acts and/or omissions  
20 and all of those parties are jointly and severally liable for their conduct based on their  
21 agency relationship. In addition, Merrill Lynch is independently liable for the conduct  
22 described below. Primarily, Merrill Lynch failed to properly train or supervise Mathieson  
23 and Stottlemyre and, as a result, Merrill Lynch is independently liable for its own acts,  
24 which have caused damage to Plaintiffs.

25  
26

1           8.     In addition to the conduct described above, other employees, agents and  
2 representatives of Merrill Lynch also acted negligently and wrongfully, and their conduct  
3 is imputed to Merrill Lynch based on the same theories as raised in paragraph 7 above.

4           9.     Defendant Pac Life is a Nebraska corporation doing business in Arizona.  
5 As part of that business, Pac Life markets and sells life insurance policies.

6           10.    Defendant AI Credit is a Delaware corporation doing business in Arizona.  
7 As part of that business, it provides premium financing for the payment of premiums for  
8 large life insurance policies such as the one described in this case.

9           11.    During all material times, upon information and belief, Defendants Merrill  
10 Lynch, Pac Life and AI Credit had a joint agreement to market and sell premium finance  
11 life insurance policies through Merrill Lynch to its customers. As part of this global  
12 marketing sales scheme, upon information and belief, Pac Life and AI Credit knew that  
13 Merrill Lynch representatives were making assurance, promises, and other representations  
14 to those customers about both the insurance policies and the loans and, most importantly,  
15 the manner in which premium financing worked. Because Defendants Merrill Lynch, Pac  
16 Life, and AI Credit worked together as part of a joint enterprise and a mutual agency, they  
17 are jointly and severally liable under all counts listed below.

18           12.    This suit involves improper insurance practices by Merrill Lynch, Pac Life,  
19 AI Credit and their agents and/or employees. Indeed, this case directly arises out of the  
20 sale of a life insurance policy that is a complicated product. The claims in the case  
21 involve complex issues regarding the replacement of life insurance (and whether  
22 replacement was appropriate under the circumstances), insurance-related illustrations,  
23 calculations under the variable components of the life insurance policy, credit ratings for  
24 life insurance companies, and other complex issues specific and applicable only to the  
25 field of insurance and the industry's practices and customs.

26           13.    Jurisdiction is proper in this Court.



1 sales pitch which marketed Merrill Lynch as a one-stop shop for a variety of financial  
2 services. Merrill Lynch also assisted him in forming the Stottlemyre Group and allowed  
3 him to utilize and market other specialists. One such specialist was Mathieson. Merrill  
4 Lynch represented that he could effectively handle complicated and sophisticated  
5 insurance and lending issues, such as the purchase of life insurance policies through use  
6 of premium financing.

7 19. Upon information and belief, Merrill Lynch assisted Stottlemyre when he  
8 provided customers (including Candiotti) with information about Merrill Lynch's team's  
9 ability to advise its clients on estate planning issues. Upon information and belief, Merrill  
10 Lynch also encouraged Stottlemyre to focus on life insurance sales.

11 20. In 2003, Stottlemyre approached Candiotti and asked him whether he was  
12 willing to move his money to Merrill Lynch. Stottlemyre provided Candiotti the  
13 marketing materials mentioned above, and also touted Merrill Lynch's ability to offer a  
14 wide array of services and expertise concerning all of his financial needs. Although  
15 Candiotti already had a financial adviser, he decided to move all of his money to Merrill  
16 Lynch because he trusted Stottlemyre and believed that Merrill Lynch truly did have the  
17 expertise necessary to protect him in connection with his global financial plan. But for  
18 the representations that Stottlemyre made about Merrill Lynch, Candiotti would not have  
19 moved his entire net worth to Merrill Lynch nor would he have agreed to purchase the life  
20 insurance policy described below.

21 21. Stottlemyre evaluated Candiotti's financial situation. Stottlemyre knew that  
22 Candiotti had retired from professional baseball and that Candiotti did not have any  
23 prospects of making as much money as he did when he was a professional baseball  
24 player. Candiotti and Stottlemyre discussed this issue. They discussed the fact that the  
25 money that Candiotti had made as a professional athlete needed to last him for the rest of  
26 his life.

1           22.    Based on representations made by Stottlemyre and the marketing materials  
2 that Candiotti received, he decided to move his money to Merrill Lynch. Shortly after  
3 moving his money to Merrill Lynch, Stottlemyre solicited Candiotti about life insurance.  
4 Stottlemyre indicated that Mathieson was an expert in life insurance and premium  
5 financing and could definitely help Candiotti to acquire a more favorable life insurance  
6 policy as part of his estate plan.

7           23.    In 2004, there was a meeting in the Merrill Lynch Scottsdale office with  
8 Stottlemyre, Mathieson and Candiotti. Mathieson introduced himself as an insurance  
9 expert, and explained to Candiotti that he could purchase a life insurance policy for no  
10 money out of pocket. Specifically, Mathieson represented to Candiotti that Merrill Lynch  
11 could offer him a no-risk product that would allow him to take out a loan to pay the  
12 premiums of the policy, and the policy would effectively pay for itself. He recommended  
13 that Candiotti purchase this no-risk policy because he would avoid having to pay  
14 premiums as he had been obligated to do under his existing policy. There were no  
15 warnings of any exposures at all. There were no warnings that the policy itself might not  
16 have sufficient funds to pay the loan; there were no warnings that the lender may not  
17 agree to continue to fund the policy; there were no warnings that changing interest rates  
18 could have a severe impact on the policy performance and the loan; and there were no  
19 illustrations of negative outcomes based on policy performance and changing rates on the  
20 loan. Essentially, there were no warnings of any risks. This was Mathieson's typical  
21 sales pitch that he employed with other customers. It is misleading, false, and completely  
22 insufficient concerning the type of risks customers face regarding this method of finding  
23 large life insurance products. Candiotti and Stottlemyre had other discussions about the  
24 premium financing and David Dorward, Ryan Ellis and Brian Massingale were present at  
25 some of those meetings.

26

1           24.   Stottlemyre did not say anything during these meetings on the substantive  
2 issues of the insurance. He did not tell Candiotti that Mathieson's statements were  
3 incorrect, but instead reaffirmed that Mathieson knew what he was doing. Before moving  
4 his money to Merrill Lynch, Candiotti had never even heard of premium financing.

5           25.   During this same time frame, Lucia spoke with Stottlemyre and Mathieson.  
6 This was mostly by phone. During these discussions, they reiterated the same assurances  
7 to Lucia that they had to Candiotti about premium financing and failed to warn of any  
8 risks. Lucia relied on those assurances in making decisions on behalf of the ILIT  
9 concerning this premium financing arrangement.

10          26.   Candiotti had trust and confidence in Stottlemyre and his role as the  
11 financial adviser. Candiotti also had trust and confidence in Merrill Lynch as his  
12 brokerage firm. He also had trust and confidence in Mathieson given his touted  
13 experience and expertise in this area. Specifically, given Mathieson's representations,  
14 affiliation with Merrill Lynch and, in particular, his represented expertise in insurance and  
15 estate planning at Merrill Lynch, Candiotti was impressed with Mathieson's credentials  
16 and placed his trust and confidence in him with respect to these estate planning issues.

17          27.   Upon information and belief, Stottlemyre was solicited and/or contacted  
18 internally within Merrill Lynch for the purpose of identifying relatively high-net worth  
19 clients as potential candidates to introduce to Mathieson to attempt to sell them large life  
20 insurance policies paid for through premium financing.

21          28.   Upon information and belief, Merrill Lynch received significant  
22 commissions on these large life insurance policies. Upon information and belief, Merrill  
23 Lynch has an agreement with Pac Life that provides significant up-front commissions and  
24 compensation to Merrill Lynch to sell Pac Life life insurance products. Upon information  
25 and belief, Merrill Lynch also has agreements with AI Credit, the lender, to sell these  
26 loans on behalf of AI Credit.

1           29. Other customers were solicited by their Merrill Lynch financial adviser to  
2 consider purchasing life insurance utilizing this scheme. Specifically, Stottlemyre  
3 approached baseball players other than Candiotti. He solicited the other players based on  
4 the same type of sales strategy, focusing on the premium financing component and  
5 attempting to convince them to purchase life insurance policies using Mathieson as the  
6 expert. The customers were introduced to Mathieson, who would then market and sell  
7 many millions of dollars of life insurance, including Pac Life policies, financed through  
8 AI Credit loans, under the premium financing scheme similar or identical to that  
9 described above. Mathieson operated out of Merrill Lynch's office located in Phoenix,  
10 Arizona at 2555 East Camelback Road, Suite 950, and made and arranged for a  
11 substantial number of these sorts of transactions with and for Arizona residents.

12           30. Upon information and belief, in 2003, Merrill Lynch began to sell these  
13 large life insurance policies using premium financing. Upon information and belief, as  
14 part of that process, Merrill Lynch entered into agreements with Capital Maximation  
15 Strategy ("CMS"), insurance companies and AI Credit to sell these policies and finance  
16 them through loans at AI Credit.

17           31. In connection with Mathieson's representations and promises to Candiotti,  
18 both Mathieson and Stottlemyre entirely failed to inform Candiotti of the concept of  
19 negative arbitrage -- the significant financial exposure to Candiotti and the trusts under  
20 certain market conditions given the variables associated with this program -- and the  
21 likelihood (indeed, near certainty) that such disadvantageous market conditions would  
22 exist during a substantial part of the loan/insurance period being promoted to Candiotti.  
23 Mathieson failed to explain to Candiotti -- at the same time he was recommending the  
24 aforementioned plan to him -- that, especially over a longer term, there was a substantial  
25 likelihood (indeed, near certainty) that the Pac Life policy that he proposed to arrange for  
26 Candiotti would not generate enough funds to pay for the loan that Mathieson and

1 Stottlemyre arranged for Candiotti with AI Credit. Mathieson failed to inform Candiotti  
2 about the financial dangers associated with reliance on Mathieson's advice given  
3 Candiotti's age at the time and good health, failing to explain that, because Candiotti  
4 would likely live for many years, it was a virtual certainty that the Pac Life policy would  
5 not be able to pay for the AI Credit loan. Further omissions by Mathieson, Stottlemyre  
6 and others at Merrill Lynch, include the lack of or disregard for a proper analysis of  
7 Candiotti's insurance needs and breach of (or substantial participation in and/or  
8 encouragement of and/or facilitation of) the duty to act in a customer's interests and not  
9 in one's self-interest.

10 32. Mathieson and Stottlemyre were the architects of the premium financing  
11 recommended here. Specifically, they chose the insurer, the insurance product, the  
12 lender, and facilitated the entire transaction through Merrill Lynch. They did not provide  
13 Candiotti or the trusts any choices on financing or insurance products. They also  
14 recommended that Candiotti purchase a life insurance policy that exceeded his net worth  
15 by approximately two times.

16 33. In 2004, Stottlemyre recommended an attorney to Candiotti to prepare the  
17 appropriate trust documents for the premium financing. Candiotti relied on Stottlemyre's  
18 advice and retained counsel to amend the Revocable Trust and form the ILIT.

19 34. After the ILIT was formed, Stottlemyre and Candiotti continued to discuss  
20 the premium financing arrangement.

21 35. In 2004, induced by these fraudulent misrepresentations and omissions,  
22 Candiotti and Lucia signed the loan documents and other associated paperwork related to  
23 the premium financing arrangement. These documents were signed at the direction and  
24 prompting of Merrill Lynch's representatives. There were no risk disclosures,  
25 instructions or warnings at that time by Stottlemyre or Mathieson. Candiotti walked into  
26

1 Stottlemyre's conference room, signed the documents while Stottlemyre sat there talking  
2 with him, and then left his office.

3 36. In October 2007, Stottlemyre informed Candiotti that he was leaving  
4 Merrill Lynch. Stottlemyre suggested that Candiotti stay with Merrill Lynch. After  
5 discussions with some of the other representatives there, Candiotti decided to move his  
6 accounts from Merrill Lynch. During certain of the discussions, Merrill Lynch  
7 representatives reiterated and reassured Candiotti that the premium financing arrangement  
8 was performing fine and there were no problems with it.

9 37. Just recently Candiotti and Lucia discovered that there is a shortfall  
10 between the value of the policy and the loan of approximately \$500,000.

11 **(Count 1- Negligence – All Defendants)**

12 38. Plaintiffs incorporate all allegations asserted above herein.

13 39. As reflected above, Candiotti and the trusts were, at all material times,  
14 customers of the Merrill Lynch companies. Mathieson held himself out as a Merrill  
15 Lynch life insurance expert, who focused on wealth planning for high net worth clients.  
16 Mathieson also held himself out as an expert in premium financing. In addition,  
17 Stottlemyre was the plaintiffs' financial adviser through the entire relevant time. In  
18 addition, Stottlemyre was the representative selling the policy for Pac Life. As such, both  
19 Stottlemyre and Mathieson owed duties to the Plaintiffs in connection with the suitability  
20 of the recommendations that they made with respect to the purchase of life insurance  
21 policy financed through an outside loan with AI Credit. Essentially, as the architects of  
22 this concept and its interrelationship between the Pac Life policy and the AI Credit loan,  
23 they had an obligation to (1) refrain from recommending an inappropriate type of estate  
24 planning device for Candiotti and the trusts that did not comply with his objectives and  
25 tolerances; (2) disclose fully the risks associated with entering into a premium financing  
26 situation; and (3) ensure that the appropriate outside experts were involved in the decision

1 including, but not limited to, Candiotti and the Trusts' outside accountants and/or lawyers  
2 to make sure that he fully understood the ramifications of entering into this situation.

3 40. Stottlemyre and Mathieson failed to comply with the applicable standard of  
4 care and did not comply with their obligations under the current state of the law. In  
5 addition, they failed to disclose material risks associated with this particular investment.

6 41. These acts or omissions proximately caused Plaintiffs harm.

7 42. Plaintiffs have been damaged in an amount to be proven at trial.

8 43. Defendants are jointly and severally liable for the acts or omissions of  
9 Stottlemyre and Mathieson, and Merrill Lynch is vicariously liable for any and all  
10 conduct, errors and omissions by Stottlemyre and Mathieson.

11 **(Count 2 – Negligent Misrepresentation – All Defendants)**

12 44. Plaintiffs incorporate all allegations asserted above herein.

13 45. Stottlemyre and Mathieson provided Plaintiffs with false and incorrect  
14 information or omitted or failed to disclose material information. Those omissions and  
15 incorrect information are described above.

16 46. Defendants Stottlemyre and Mathieson intended that Plaintiffs rely upon the  
17 information provided, provided it for that purpose, and were aware that the statement  
18 would be used by Plaintiffs in deciding whether to enter into the premium finance  
19 agreements.

20 47. Defendants Stottlemyre and Mathieson failed to exercise reasonable care,  
21 competence in obtaining or communicating the information. Those obligations are based  
22 on what a reasonable and prudent insurance expert would have told Plaintiffs under the  
23 same or similar circumstances.

24 48. Plaintiffs relied on the advice that Stottlemyre and Mathieson provided to  
25 them in deciding to enter into the premium finance agreements, and Stottlemyre and  
26 Mathieson were aware that Plaintiffs had relied on the representations in deciding to enter

1 into the agreements, and evinced this understanding when they met with Plaintiffs to sign  
2 off on the premium finance agreements and said nothing about the risk and exposure to  
3 Plaintiffs.

4 49. Plaintiffs' reliance was justified due to the special relationship of trust and  
5 confidence that existed between the parties, in part due to Stottlemyre and Mathieson's  
6 representations as to their unique and/or special expertise in the arena of premium finance  
7 insurance policies.

8 50. Defendants are jointly and severally liable for the acts or omissions of  
9 Stottlemyre and Mathieson, and Merrill Lynch is vicariously liable for any and all  
10 conduct, errors and omissions by Stottlemyre and Mathieson.

11 51. As a result of the negligence, as alleged herein, Plaintiffs have been  
12 damaged in an amount to be proven at trial.

13 **(Count 3 – Negligent Hiring, Training and Supervision – Merrill Lynch and Pac**  
14 **Life)**

15 52. Plaintiffs incorporate all allegations asserted above herein.

16 53. Merrill Lynch had a duty to check on the background and expertise of the  
17 persons they hired to market and sell programs through Merrill Lynch. They also had the  
18 duty to properly train those persons who would market and sell those programs to their  
19 customers, and to ensure that the risks associated with those programs were disclosed. In  
20 addition, Merrill Lynch had the duty to properly supervise employees and representatives  
21 who were marketing and selling those programs to their customers.

22 54. Merrill Lynch did not use the requisite degree of care that a reasonable and  
23 prudent financial investment company would in hiring, training and supervising  
24 Mathieson or Stottlemyre. Upon information and belief, Merrill Lynch knew or should  
25 have known that Mathieson and Stottlemyre were selling this type of premium financing  
26

1 program to Merrill Lynch customers when it was inappropriate to do so and without  
2 making the appropriate disclosures.

3 55. In hiring, training, and supervising Mathieson and Stottlemire, Merrill  
4 Lynch acted negligently and, as a proximate result, permitted Mathieson and Stottlemire  
5 to make misrepresentations concerning the appropriateness of this type of premium  
6 financing to Plaintiffs and further allowed them to conceal the risks associated with that  
7 program. As a result of Pac Life's agreement with Merrill Lynch, upon information and  
8 belief, Pac Life had an obligation to ensure that certain representatives selling its policies  
9 were doing so in accordance with applicable standards of care. Upon information and  
10 belief, Pac Life did not do so here.

11 56. As a result of negligence, as alleged herein, Plaintiffs have been damaged in  
12 an amount to be proven at trial.

13 **(Count 4 – Fraud and Constructive Fraud – All Defendants)**

14 57. Plaintiffs incorporate all allegations asserted above herein.

15 58. Defendants Stottlemire and Mathieson made material representations about  
16 the premium finance policies that were false.

17 59. At the time the representations alleged in this case were made, a  
18 confidential fiduciary relationship existed between the parties and/or Defendants  
19 Stottlemire and Mathieson held superior knowledge over Plaintiffs with regard to  
20 premium finance insurance policies.

21 60. Upon information and belief, Defendants Stottlemire and Mathieson knew  
22 the representations were false and made them with the intent to deceive Plaintiffs and  
23 induce them to enter into the premium finance agreements.

24 61. Plaintiffs justifiably relied on Defendants Stottlemire and Mathieson's  
25 representations.

26

1           62. As a result of Plaintiffs' reliance on Defendants Stottlemyre and  
2 Mathieson's representations, Plaintiffs have been injured in an amount to be proven at  
3 trial.

4           63. Defendants are jointly and severally liable for the acts or omissions of  
5 Stottlemyre and Mathieson, and Merrill Lynch is vicariously liable for any and all  
6 conduct, errors and omissions by Stottlemyre and Mathieson.

7 **(Count 5 – Fraudulent Misrepresentation/Fraudulent Inducement – All Defendants)**

8           64. Plaintiffs incorporate all allegations asserted above herein.

9           65. Defendants Stottlemyre and Mathieson made material representations about  
10 the premium finance policies that were false.

11           66. At the time the representations alleged in this case were made, a  
12 confidential fiduciary relationship existed between the parties and/or Defendants  
13 Stottlemyre and Mathieson held superior knowledge over Plaintiffs with regard to  
14 premium finance insurance policies.

15           67. Defendants Stottlemyre and Mathieson knew the representations were false  
16 and made them with the intent to deceive Plaintiffs and induce them to enter into the  
17 premium finance agreements.

18           68. Plaintiffs justifiably relied on Defendants Stottlemyre and Mathieson's  
19 representations, and entered into the premium finance agreements.

20           69. As a result of Plaintiffs' reliance on Defendants Stottlemyre and  
21 Mathieson's representations, Plaintiffs have been injured in an amount to be proven at  
22 trial.

23           70. Defendants are jointly and severally liable for the acts or omissions of  
24 Stottlemyre and Mathieson, and Merrill Lynch is vicariously liable for any and all  
25 conduct, errors and omissions by Stottlemyre and Mathieson.  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**(Count 6 – Fraudulent Concealment – All Defendants)**

71. Plaintiffs incorporate all allegations asserted above herein.

72. In explaining the Plaintiffs’ risk and exposure under the premium financing agreements, Defendants Stottlemyre and Mathieson concealed material information from Plaintiffs.

73. Defendants Stottlemyre and Mathieson were silent as to the concealed information, and engaged in a purpose or design in suppressing the truth.

74. Defendants Stottlemyre and Mathieson knew they had concealed material information from Plaintiffs and did so with the intent to deceive Plaintiffs and induce them to enter into the premium finance agreements.

75. At the time Defendants Stottlemyre and Mathieson concealed material information from Plaintiffs, they had a duty to disclose the information because Defendants held special or superior knowledge of the facts not available to Plaintiffs, and Defendants communicated only half-truths and other misleading, partial disclosures to Plaintiffs with regard to premium finance insurance policies.

76. Plaintiffs justifiably relied on Defendants Stottlemyre and Mathieson’s representations, and entered into the premium finance agreements. Specifically, given Defendants Stottlemyre and Mathieson’s special or superior knowledge of the premium financing policies and the complexity of such policies, Plaintiffs could not have detected the concealments through the exercise of due diligence.

77. Defendants are jointly and severally liable for the acts or omissions of Stottlemyre and Mathieson, and Merrill Lynch is vicariously liable for any and all conduct, errors and omissions by Stottlemyre and Mathieson.

78. As a result of Plaintiffs’ reliance on Defendants Stottlemyre and Mathieson’s representations, Plaintiffs have been injured in an amount to be proven at trial.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**(Count 7 – Rescission – Merrill Lynch, Pac Life and AI Credit)**

79. Plaintiffs incorporate all allegations asserted above herein.

80. As a result of Defendants’ misrepresentations, as alleged above, Plaintiffs are entitled to rescission of the premium finance agreements (i.e., the insurance policy and the loan agreements) and rescissory damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs pray for the following relief in their favor and against the Defendants and any of them:

- A. Compensatory damages in an amount to be proven at trial;
- B. Rescission and rescissory damages;
- C. Disgorgement of all profits; and
- D. Such other relief as the Court deems proper in favor of plaintiffs or either of them.

DATED this 30<sup>th</sup> day of June, 2009.

MEYER HENDRICKS, PLLC

By   
Ed Hendricks, Jr.  
Scott Mihalik  
3101 N. Central Avenue, Suite 800  
Phoenix, Arizona 85012  
Attorneys for Plaintiffs

-and-

THOMSON CONANT, PLC  
Paul A. Conant  
2398 E. Camelback Road  
Phoenix, Arizona 85016  
Attorneys for Plaintiffs