

**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. 21

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.

Case: 2009 CA 007621 B  
80036112268  
Dkt: CABCOHF

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.*<sup>1</sup> 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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<sup>1</sup>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.<sup>2</sup> 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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<sup>2</sup> 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.

**ALLIANZ'S MISSTATEMENTS AND OMISSIONS**

15. During the last four years, approximately 90% of Allianz's annual net premium revenues are derived from its domestic (U.S.) sales of the Company's single and flexible premium deferred annuity products. Allianz markets and sells its deferred annuity products in this District primarily through sales agents affiliated with field marketing organizations ("FMOs"). According to a recent A.M. Best Company report, Allianz holds a 40% -100% ownership interest in several FMOs through whom the Company markets and sells its deferred annuity products.

16. While the FMOs recruit and hire individual sales agents and brokers, each agent and broker enters into a separate written agency agreement with Allianz and the defendant is responsible for their formal appointment as the Company's licensed insurance agents in the District of Columbia and other states in which Allianz conducts business. Allianz nonetheless is ultimately is responsible for their training regarding the characteristics and attributes of the Company's annuity products and providing adequate supervision of its agents' sales activities.

17. Allianz also creates and disseminates the sales brochures, contract illustrations and specimen annuity contracts that its FMO sales force used in marketing and selling the Company's deferred annuity products. In fact, Allianz requires all of its agents to use only written standardized forms that must be returned to Allianz before a policy is issued. The standardized forms contain boilerplate language that inadequately explains the features of the products and also contains deceptive and complicated information that is not readily understood by the policyholder. Allianz also requires each policyholder to receive an uniform *Consumer Brochure* created by Allianz for each of its

annuity products, and review and/or sign Allianz's standard-form *Statement of Understanding and Application for Annuity* prior to the acceptance and issuance of each annuity contract by Allianz.

18. The Company also administers the various "incentive programs" which it uses to motivate its agents' sales activities, and also offer such incentives as free vacations and other sales promotions in addition to the any agent commissions and persistency bonuses to bolster its deferred annuity sales. These potential and actual conflicts of interest between Allianz and its agents are not disclosed to prospective and actual purchasers of Allianz annuities.

19. At all times mentioned in the causes of action alleged herein, each and every FMO was an agent and/or employee of each and every other FMO and defendant Allianz. In doing the things alleged in the causes of action stated herein, each and every FMO and their respective officers and employees were acting within the course and scope of this agency or employment and was acting with the consent, permission and authorization of each of the remaining FMOs and defendant Allianz. All actions of each FMO and their respective officers, employees and agents as alleged in the causes of action stated herein were ratified and approved by every other FMO and defendant Allianz or its officers or managing agents. Whenever this complaint references acts of any FMO or defendant, such allegation shall be deemed to mean the act of those FMOs and the defendant named in the particular cause of action and each of them acting, individually, jointly, and severally.

20. According to an A.M. Best Company Report issued August 20, 2005, since 2001 Allianz has collected over \$34 billion in premiums from the marketing and

sale of its deferred annuity products to persons in the District and in elsewhere in the United States. Of that annuitant group, approximately one-half were senior citizens, *i.e.*, age 65 or older, when they purchased their Allianz deferred annuity that had a maturity date beyond their actuarial life expectancy at the time of sale. Likewise, senior citizens are being forced to suffer surrender charges on their deferred annuities while living on a fixed incomes and with little future earning capacity. Lost in the Company's all consuming zeal to maximize its profits were the interests of its annuity purchasers, many of whom were time after time sold overpriced deferred annuities which Allianz knew (or should have known) would not mature until well beyond their actuarial life expectancy.

*Misstatements and Omissions Relating to Deferred Annuity Products*

21. To perpetrate its scheme to defraud deferred annuity purchasers, including senior citizens, Defendant Allianz and its FMOs and sales agents intentionally conceal, omit, and fail to fully disclose critical information about the true costs, attributes and risks of Allianz deferred annuities, which if disclosed, would reveal that Allianz deferred annuities are inferior to comparable investment products and are deceptively sold. Among other material facts, Defendant either fails to disclose altogether or inadequately discloses and obscures facts relating to product features, costs, expenses, performance, investment risk and illiquidity which, if disclosed, would preclude reasonable consumers from purchasing the annuity. As a corollary to the omissions and inadequate disclosures, Defendant also falsely advertises purported benefits or features of its deferred annuity products.

22. For example, during the relevant period, Allianz consistently failed to adequately disclose the following material facts to prospective and actual purchasers of

its deferred annuity products: (1) that Allianz deferred annuity products do not provide “safety of principle” with “no risk of loss;” (2) that Allianz deferred annuity products contain concealed sales charges, loads, expenses and fees; (3) that 100% of premiums do not begin earning interest immediately upon payment; (4) the true effect of first year interest rates and bonuses on the product’s accumulation values; (5) the existence and negative effect of high agent commissions, charges and costs to the annuity’s values and performance; (6) that from day one the policy values of a deferred annuity 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 the purported bonus features and initial teaser interest rates were illusory marketing gimmicks and would be recouped by the Company during the surrender period; (8) that products containing a market value adjustment feature have a concealed bias favoring Allianz built into the formula; (9) that the bonus feature provided on Allianz two-tiered annuity products was illusory; and (10) that the actual value of Allianz annuity products at the time of purchase was significant less than their purchase price.

*Misstatements and Omissions Relating to Annuity Bonus Credits*

23. Allianz falsely markets to consumers and encourages its agents to represent that its two-tiered equity-index annuities offer an “upfront” bonus in order to entice individuals to purchase its two-tiered equity-index annuity products. The “upfront” premium bonus is central to Allianz’s scheme to defraud.

24. Allianz marketed and continues to market its “upfront” premium bonuses as a great way for new and existing policyholders to help recover losses from previous investments, overcome surrender charges, pay capital gains taxes and save for retirement.

25. In reality, the 10% premium bonus offered in Allianz's two-tiered equity-index annuities is anything but "upfront" because the premium bonus and all positive accrued index returns are credited to the Annuitization Value that is not available to the policyholder unless he or she: annuitizes the entire policy after waiting at least five years (deferral period); and, elects to receive annuity income payments for a period of at least ten years. If a policyholder fails to satisfy either of these requirements, they never receive any premium bonus, they lose all positive accrued index returns and are only entitled to receive the Cash Value less a 12-1/2% surrender charge. As explained above, this 12-1/2% surrender charge is indefinite and does not decline over time as it typically does in a one-tiered equity-index annuity.

26. Additionally, Allianz's uniform pre-sale marketing materials falsely promised that annuity purchasers would receive "full value" or "full Annuitization Value" if the two-tiered bonus annuities were held in deferral for at least 5 years and then annuitized for at least 10 additional years (the "5x10 Requirement"). Allianz also failed to disclose that annuitants would not receive the full value of the 10% bonus even if the 5x10 Requirement was satisfied because the Annuitization Value is reduced during deferral and at the time of annuitization by hidden deduction and fees internally referred to as the "expense recovery adjustment" or "haircut."

27. In addition, the premium bonus does not overcome or even offset previously suffered investment losses, surrender penalties and/or capital gains taxes because a policyholder who experiences one or more of these negative financial events realizes them immediately, while the "upfront" bonus can not be received for at least 15 years (if ever).

28. By design, therefore, the premium bonuses in Allianz's two-tiered equity-index annuities are not received "upfront" or "immediately" and do not overcome or even offset previously suffered investment losses, surrender penalties and/or capital gains taxes as represented in the pre-purchase marketing materials.

29. Even more deceptive and misleading is the fact that the policyholder cannot receive any purported benefit from the product unless the product is annuitized, which is an event that Allianz knew or should have known will virtually never occur.<sup>3</sup>

30. In an effort to conceal the significance of the annuitization requirement, Allianz fails to adequately disclose that annuitization requires a policyholder to surrender ownership of their entire principal investment to the insurance company. In fact, the term annuitization is not adequately defined in the insurance policy or any of the other standardized documents presented to the policyholder before or after the policy is purchased. Similarly, Allianz's definition of annuitization is misleading, if not patently false, because it fails to state the most material aspect of annuitization, that the policyholder is required under the policy to surrender ownership of the entire principal investment to the insurance company in exchange for the "income stream" described by Allianz.

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<sup>3</sup> Statistics show that less than 5% of all policyholders elect to annuitize deferred annuities because annuitization requires a policyholder to surrender ownership of their principal investment to the insurance company. As a result, the policyholder is rarely willing to bet that he or she will live long enough to recoup their money and a policyholder is generally not permitted to bequeath it once annuitization is elected. This fact is very important to Allianz's scheme to defraud because the company knows or should know that its policyholders will not likely annuitize and therefore lose the premium bonus and all accrued index returns and will be required to pay an indefinite 12% (or higher) surrender charge.

31. Furthermore, Allianz's standardized two-tiered annuity policy falsely states in a policyholder-specific illustration given to the annuitant at the point of solicitation and sale that the policyholder is guaranteed to receive the premium bonus if the policy is annuitized during the first five years. This uniform written representation is patently false, because if the policyholder were to annuitize prior to Year 6, not only would the bonus not ever be received but the policyholder would also lose all accrued positive index returns and suffer a 12 1/2 % surrender charge on the Cash Value.

32. Allianz created and included the policyholder-specific illustration in the insurance policy so that its policyholders would be able to apply the boilerplate information contained in the insurance policy and all other standardized documents to his or her individual circumstances.

33. The deceptive error contained in the illustration will apply to all two-tiered annuity purchasers because the equations used to determine the values in the illustration are uniformly formatted by Allianz and are determined solely by the amount of the premium paid by the policyholder.

34. By this Complaint, Plaintiff seeks an order enjoining Allianz from, among other things, selling deferred annuity products to consumer residents of this District without first disclosing all material facts, costs and risks associated with the deferred annuity products. Defendant's uniform marketing materials also falsely advertise and misrepresent features of its deferred annuity products. Plaintiff also seeks treble rescission and/or restitution to place members of the general public of this District who purchased Allianz deferred annuity products in *status quo ante*, and such other relief available under the District of Columbia's Consumer Protection Procedures Act

(“CPPA”) as may be appropriate under the circumstances to redress the Defendant’s wrongful conduct in marketing and selling residents of this District deferred annuity products through false, deceptive, unfair and unlawful trade practices as alleged herein.

35. Accordingly, Defendant’s deceptive advertising and labeling practices constitute an unlawful trade practice and therefore violate the CPPA. D.C. CODE ANN. § 28-3904(a), (d), (e), (f), (h) and (r)(3) (“It shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to: (a) represent that goods or services have . . . characteristics . . . that they do not have; . . . (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another; (e) misrepresent as to a material fact which has a tendency to mislead; . . . (f) fail to state a material fact if such failure tends to mislead; . . . (h) advertise or offer goods or services without the intent to . . . sell them as advertised or offered; . . . (r) make . . . unconscionable terms or provisions of sales . . . [which includes] (3) gross disparity between the price of the property or services sold . . . and the value of the property or services measured by the price at which similar property or services are readily obtainable in transactions by like buyers . . . [or] (5) knowingly take[s] advantage of the inability of the consumer reasonably to protect his interests by reasons of age, physical or mental infirmities, . . . or similar factors”).

36. All such statutory violations are actionable by way of the cause of action available to a representative plaintiff, such as plaintiff Susan Edwardia Ostrow, under § 28-3905(k)(1) of the CPPA. D.C. CODE. ANN. § 28-3905(k)(1).

**TOLLING OF STATUTES OF LIMITATIONS**

37. Any applicable statutes of limitations have been tolled or have not run because, despite exercising reasonable diligence, members of the general public of this District who purchased Allianz deferred annuities could not discover, and were prevented from discovering, Defendant's wrongdoing. Defendant knowingly and actively concealed and denied the facts as alleged herein, and had actual or constructive knowledge of the wrongful courses of action alleged. Annuity purchasers have been kept ignorant of the information essential to the pursuit of these claims, without any fault or lack of diligence on their part. In fact, Defendant fraudulently and deceitfully concealed and misrepresented to the public material facts concerning the true attributes, characteristics and features of its deferred annuity products, and members of the general public, did not discover the facts constituting Defendant's unlawful, deceptive and unfair trade practices until a date within the limitations period governing the claims asserted herein. Purchasers were not at fault for failing to discover Defendant's misconduct sooner, and had no actual or presumptive knowledge of the facts of Allianz's misconduct to put them on inquiry notice. Members of the general public could not reasonably have discovered Defendant's misrepresentations and/or material omissions sooner, therefore, their claims accrue on the date they receive notice of this lawsuit, and any statute of limitations are tolled by the filing of this lawsuit.

38. The applicable statute of limitations have also been tolled by operation of the prior certification of nationwide classes in the pending matters of *Negrete v. Allianz Life Insurance Company of North America*, Civil No. 05-cv-6838 (CAS)(MANx) (C.D. Cal.), and *Mooney v. Allianz Life Insurance Company of North America*, Civil No. 06-cv-

545 (ADM/FLN) (D. Minn.). As a result, Defendant is estopped from relying on any statute of limitations or similar defense to the claims raised in this Complaint.

**JURISDICTION AND VENUE**

39. The Court has subject matter jurisdiction over the CPPA claims asserted in this matter pursuant to D.C. CODE ANN. § 28-3905(k)(1). The Court has personal jurisdiction over Allianz pursuant to D.C. CODE ANN. §§ 13-334(a) and 13-423(a)(1), because the allegations and claims for relief herein arise from Defendant's "transaction of business" and "doing business" in the District of Columbia.

40. As a result of Defendant's purposeful and substantial advertising, marketing and selling of deferred annuity products in the District of Columbia, Defendant has established sufficient contacts with the District of Columbia such that it is reasonable for Allianz to reasonably anticipate being subject to action in the courts of the District of Columbia.

41. Venue is proper in the District of Columbia because Plaintiff resides within the District of Columbia and this action relates to Defendant's activities within the District of Columbia.

**PARTIES**

42. Plaintiff Susan Edwardia Ostrow is, and at all times mentioned herein was, a resident of the District of Columbia and a citizen of the United States of America.

43. Defendant Allianz Life Insurance Company of North America is, and at all relevant times herein was, a privately held stock insurance corporation. Allianz is domiciled in Minnesota and is authorized to transact and, in fact, is transacting the

business of insurance in the District of Columbia. Allianz maintains its executive offices at 5701 Golden Hills Drive, Minneapolis, Minnesota, 55416.

**LEGAL FRAMEWORK**

**A. District of Columbia Consumer Protection Procedures Act**

44. The CPPA provides:

A person, whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice in violation of the law of the District of Columbia . . . .

D.C. CODE. ANN. § 28-3905(k)(1).

45. It is a violation of District of Columbia law, and therefore an unlawful trade practice under the CPPA, *id.*, “*whether or not any consumer is in fact misled, deceived or damaged thereby,*” for any person to:

(a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

\* \* \*

(d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;

(e) misrepresent as to a material fact which has a tendency to mislead;

(f) fail to state a material fact if such failure tends to mislead;

\* \* \*

(h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered;

\* \* \*

(r) make or enforce unconscionable terms or provisions of sales . . . ; in applying this subsection, consideration shall be given to the following, and other factors:

\* \* \*

(3) gross disparity between the price of the property or services sold . . . and the value of the property or services measured by the price at which similar property or services are readily obtainable in transactions by like buyers . . . ;

\* \* \*

(5) that the person has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reasons of age, physical or mental infirmities, . . . or similar factors;

*Id.* § 28-3904.

46. Additionally, “the CPPA’s extensive enforcement mechanisms apply not only to the unlawful trade practices proscribed by § 28-3904, but to all other statutory and common law prohibitions.” *Osbourne v. Capital City Mortgage Corp.*, 727 A.2d 322, 325-26 (D.C. 1999).

47. The CPPA allows for treble damages, or \$1,500 per violation, whichever is greater, as well as reasonable attorney’s fees, an injunction against the unlawful trade practice, “additional relief as may be necessary to restore the consumer money or property . . . which may have been acquired by means of the unlawful trade practice,” and “any other relief the court deems proper.” D.C. CODE ANN. § 28-3905(k)(1).

**B. Harm to District of Columbia Consumers and Plaintiff’s Members**

48. On information and belief, Plaintiff alleges that consumer residents of the District of Columbia have been and will continue to be injured by Defendant’s conduct because they purchase deferred annuity products that Allianz underwrites and deceptively markets, solicits and sells to consumers as being safe and secure investments when, in fact, they misrepresent and omit the material information described herein. As such, consumers have suffered and will continue to suffer actual and present economic damage

as a result of Defendant's actions because they have expended funds to purchase Allianz deferred annuity products that they otherwise would not have purchased.

**PLAINTIFF'S CLAIMS FOR RELIEF**

**COUNT ONE – Violations of the D.C. Consumer Protection Procedures Act  
Based on Misrepresentations and Failure to Disclose Material Facts**

49. Plaintiff refers to each and realleges every preceding paragraph and incorporates those paragraphs as though set forth at length in this cause of action.

50. Plaintiff brings this claim in her representative capacity against Allianz on behalf of affected consumers and the general public of the District of Columbia, pursuant to §28-3905(k)(1) of the CPPA, which provides that any "person, whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice in violation of a law of the District of Columbia." D.C. CODE ANN. § 28-3905(k)(1).

51. In connection with the marketing, solicitation and sale of its deferred annuity products, Allianz has falsely and deceptively advertising and represented its attributes and characteristics and, in so doing, Defendants has "represent[ed] that goods or services . . . have characteristics . . . uses [or] benefits . . . that they do not have;" "represent[ed] that goods or services . . . are of particular standard, quality [or] grade . . . if in fact they are of another;" "misrepresent[ed] as to a material fact which has a tendency to mislead;" "fail[ed] to state a material fact if such failure tends to mislead;" "advertise[d] . . . goods or services . . . without the intent to sell them as advertised;" and to "make . . . unconscionable terms or provisions of sales." D.C. CODE ANN. § 28-3904(a), (d), (e), (f), (h), and (r),(3) and (5).

52. These unlawful trade practices have caused and will continue to cause affected consumers and members of the general public in this District the injuries described above.

**PRAYER**

WHEREFORE, plaintiff Susan Edwardia Ostrow in her representative capacity requests judgment against defendant Allianz Life Insurance Company of North America, as follows:

A. For declaratory judgment that the Defendant's acts as alleged above violates the D.C. Consumer Protection Procedures Act, D.C. Code Ann. § 28-3904(a), (d), (e), (f), (h), and (r)(3) and (5);

B. Appropriate injunctive relief, including an Order that Defendant permanently cease and desist from unlawful trade practices, namely that marketing, solicitation and sale of Allianz deferred annuity products without first providing a full and fair disclosure of all material facts affecting the value and financial performance of such annuity products;

C. The greater of treble damages or \$1,500 per violation;

D. Pre- and post-judgment interest as permitted by law;

E. Additional relief as may be necessary to restore the consumer the money or property which may have been acquired by means of the unlawful trade practice;

F. Reasonable attorney fees and costs, and reasonable legal expenses; and

G. Such other relief as this Court deems equitable and just.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury of this matter.

Dated: October 14, 2009

BERK LAW PLLC  
Steven N. Berk  
1225 15<sup>th</sup> St NW  
Washington, D.C. 20005  
Telephone: 202-232-7550  
Facsimile: 202-232-7556

FINKELSTEIN & KRINSK LLP  
Jeffrey R. Krinsk  
Howard D. Finkelstein  
Mark L. Knutson  
C. Michael Plavi II  
501 West Broadway, Suite 1250  
San Diego, CA 92101-3579  
Tel: 619/ 238-1333  
Fax: 619/238-5425

Attorneys for Representative Plaintiff  
Susan Edwardia Ostrow

By: \_\_\_\_\_



Steven N. Berk, Esq.  
DC Bar No. 432870