How the ‘Harkin Amendment’ Enabled the ‘Bermuda Triangle’

By Kerry Pechter *Tue, Feb 3, 2026*

My bias regarding the Bermuda Triangle' was confirmed when I read “The Law of Capitalism” (Yale, 2025) and “The Code of Capital” (Princeton, 2019) by Columbia law professor Katharina Pistor. Assets are legal constructs, her books explain.

Like genetic codes, legal codes can have evolutionary implications.

When I first read the “Harkin amendment” to the 2010 Dodd-Frank financial regulation, I felt like I’d found the gene that determined the morphology of the complex financial organism that I call the “Bermuda Triangle” strategy.

Had that amendment not encoded fixed indexed annuities (FIAs) as insurance, then the strategy of buying life insurers to sell FIAs, of turning FIA liabilities into private credit, and of sending investment risk offshore, might not have attracted private equity (PE) giants the way it has.

But it did appeal to the PE firms, in a big way. Without the amendment, Wall Street firms wouldn’t be able to sell an investment-like insurance product in a legal habitat where federal watchdogs were excluded and where state regulators were much less aggressive.

This view of the “triangle” came into sharper focus when I came across two books by Columbia University law professor Katharina Pistor: “**The Law of Capitalism**” (Yale, 2025) and “**The Code of Capital**” (Princeton, 2019).

Pistor’s books helped explain how a few lines of legal code can enable (or disable) a multi-trillion-dollar segment of the financial industry, and how the Bermuda Triangle companies cherry-pick the laws and regulations that suit them.

For Pistor, laws are the “scaffolding” of the financial system and financial assets are legal constructs. Every asset that’s derived from dollars—Treasury bills, corporate bonds, stocks, mutual funds, private credit and equity, securitizations, mortgages, credit cards, cryptocurrencies, and all manner of contracts—has its own precise legal DNA.

Financial professionals write that code to their own advantage. Compliance with insurance

law may be a burden for insurance company lawyers, but the law also gives insurers their special license to swap long-dated promises for ready money.

“Capitalism is a legal regime, not just an economic system,” Pistor writes. She shows how “capital is coded in law, or how specific legal modules—foremost among them property rights and collateral, contract, trust, corporate and bankruptcy law—can be deployed to turn simple objects, claims or ideas into capital.”

Neither of Pistor’s books mentions what we call the Bermuda Triangle strategy or examines the regulation of annuities. But she has a lot to say about the kinds of legal and regulatory arbitrage—the exploitation of differences between jurisdictions—that makes that strategy financially attractive.

Legal arbitrage “shows how actors with greater resources can engineer end runs around the law,” Pistor writes in her latest book. “Legal-arbitrage opportunities are particularly rampant when different legal or regulatory regimes overlap… for example, at the intersection of private and public law, as well as in transnational transactions.”

“When legal systems give private actors the power to choose the legal regime to be applied to their private transactions, legal arbitrage can be taken to another level altogether,” she writes. “It benefits actors with sufficient resources to hire attorneys to help them navigate a maze of domesticate and international laws in order to configure a world of law that works best for them.”

Legal arbitrage isn’t a “bug, it’s a feature of the legal system,” she told me in a phone interview. And while she respects the right of businesses to maneuver through or around obsolete laws, she believes that the spirit of the law is too often ignored.

“We will always need property and contract law to ensure the autonomy of private actors to work without state approval and central planning,” she said in an interview. “[But] we’ve stripped the law of its normative foundation. It’s just the scaffolding, the ‘black letter law,’ that’s left.”

In the area of pensions, she laments that the “courts have insulated officers from duty-of-care. We have allowed duty of care to go down the drain.” In the absence of a general obligation to “treat people fairly,” she told me, the law often leaves individuals no other recourse than arbitration or a class-action lawsuits.

Pistor’s words seem applicable to the suit filed last fall by NASCAR driver Kyle Busch and

his wife, Samantha, against their insurance agent and Pacific Life, the issuer of their $10 million indexed universal life (IUL) insurance policy.

Through Pistor’s lens, it’s easy to see the web of intersecting and over-lapping legal and regulatory regimes that Kyle and Samantha Busch and their lawyers have to navigate and which, they now know, serve to protect the carriers and the agent. [See this *RIJ*’s story on the Busch case in this issue.]

When Senator Tom Harkin added his fateful amendment to the sprawling Dodd Frank law back in 2010, he may have thought he was preserving the indexed annuity business as it was, not opening the door to the Bermuda Triangle.

The amendment doesn’t even include the words “fixed indexed annuity” or “equity indexed annuity.”

But it kept FIAs in the realm of the insurance, and incentivized asset managers to buy into life insurers, gather fixed annuity liabilities, match them with illiquid private assets, and reinsure their investment risks offshore.

Had FIAs been coded as a security, federal regulators would likely have found them too complex and opaque to be suitable for retail investors. The Bermuda Triangle may never have been born.

And there’s a sequel. In 2018, the code of FIAs would be edited again, when two out of three judges at the famously pro-business Fifth Circuit Court of Appeals reversed a 2016 Department of Labor rule that contested their sale to IRA owners.

Had the Obama DOL’s “best interest” rule not been rescinded by the Fifth Circuit, or had the Trump DOL not declined to challenge the Fifth Circuit’s decision, the current drive to embed FIAs in 401(k) plans might have no legal footing at all.

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