Ohio National Sued for Compensation Breach

By Kerry Pechter *Thu, Nov 15, 2018*

So far in November, three variable annuity sellers, including Commonwealth Financial, have filed federal class action lawsuits against Ohio National Life, which this fall left the annuity business and cancelled further payment of agent trail commissions on still-active VA contracts.

A Whitehouse, Texas, financial advisor has filed a federal class action suit against Ohio National Life in Ohio Southern District Court for allegedly refusing to pay future trail commissions on certain variable annuities with lifetime income riders that he and other broker-dealer reps have sold in recent years.

The **suit**, filed by advisor Lance Browning of Income Solutions Wealth Management, claims that Ohio National should continue paying him $89,000 a year in annual commissions that he earned by selling about 100 Ohio National annuity contracts that are still active.

On November 5, Commonwealth Equity Services, a Waltham, Mass., broker-dealer filed a similar **suit** against Ohio National in Massachusetts U.S. District Court. A third **suit** filed on November 8 in Ohio Southern U.S. District Court against Cincinnati-based Ohio National by Veritas Independent Partners, a Conway, Arkansas, broker-dealer.

In September, Ohio National's assistant general counsel sent a letter telling advisors that it was canceling its selling agreements with them and their affiliates as of December 12, and it would no longer pay trail commissions to advisors who sold its products and opted for a combination of up-front and annual commission payments rather than a single large up-front commission.

Letters were also sent by the senior vice president of annuity operations at Ohio National, to variable annuity contract owners offering to buy back their contracts between November 12, 2018 and February 11, 2019. If the client would surrender the contract, Ohio National promised to increase the contract's "Enhancement Base" by 65% or a 10% enhancement of the "Minimum Enhancement Amount."

Annuity issuers have in the past offered to buy back variable annuity contracts that are particularly valuable for clients–that is, the account balances alone don't cover the promised benefits–but by the same token represent significant liabilities for the insurer.

According to the Browning suit:

"Ohio National is unlawfully trying to change the rules after the game has already started. Ohio National has issued billions of dollars' worth of variable annuity policies with guaranteed income benefit riders. The issuance of these policies involves four parties – Ohio National (the issuer), a broker-dealer (which has a "selling agreement" with Ohio National permitting it to sell the policies), a securities representative (who advises the customer about the policy), and a customer (who purchases the policy). Ohio National has induced the sale of its policies by promising annual, recurring commissions to the broker-dealers and, by extension, the securities representatives, and customers have purchased these policies believing that they will be able to rely on their trusted securities representatives to advise them on how to manage the investments in the policy and whether or when to annuitize or surrender the policy. Having induced the sales of these policies based on these promises, Ohio National has announced that it does not intend to hold up its end of the bargain – it is refusing to pay the promised recurring commissions, and thereby effectively cutting off customers from receiving financial advice about these policies from their trusted financial advisors. Ohio National is not allowed to do that.

"While Ohio National has the right to discontinue future sales of the annuities, it may not unilaterally terminate its obligation to pay trailing commissions on existing annuities.

"Perhaps even worse, Ohio National's decision to stop paying trailing commissions for which it is already obligated will not even reduce the expenses for investors. The costs of the annuities will not go down one penny. Rather, instead of paying trailing commissions to the broker-dealers and their securities representatives, Ohio National has decided to simply pocket that money itself instead. And incredibly, Ohio National has not even implemented this unfair and improper policy evenly across the board as to all broker-dealers: it is continuing to pay trailing commissions to its own captive broker-dealer, Ohio National Equities, Inc. Furthermore, Ohio National is continuing to pay trailing commissions to broker-dealer Morgan Stanley Smith Barney LLC ("Morgan Stanley") and its securities representatives."

Lance Browning has been a securities representative with LPL Financial LLC since August 2012, according to his complaint. Before that, he was with Morgan Keegan and, from 1997 to 2005, with UBS/PaineWebber. All of those firms have selling agreements with Ohio National, which entitles Browning to trail commissions for selling its annuities, the complaint said.

Browning has sold over 100 Ohio National annuities that have currently not been surrendered, annuitized, or under a death claim, according to the suit. It said he has received approximately $89,000 in trailing commissions from Ohio National per year for many years. He claims about $89,000 in trailing commissions in 2019 alone, from those annuities already existing and in place.