
Robin Hood or Just Robbin'?

By Editor Test *Wed, Feb 17, 2010*

Rhode Island attorney Robert Flanders said "stranger-originated annuity transactions" are perfectly legal.

While Western Reserve Life describes his client's "stranger-originated annuity transactions" as fraud, attorney Robert Flanders, a Harvard Law graduate and former Rhode Island Supreme Court Justice, says that Joseph Caramadre merely took fair advantage of a tempting loophole in certain variable annuity contracts.

"There's nothing new here," Flanders told RIJ. "He's been doing these kinds of investments for 15 years. In some cases he invested on his own account. Or he invested for others." (See this week's cover story, "In League with the Angel of Death.")

In fact, he described his client's actions as a form of rough justice, noting that companies like Western Reserve, a unit of Aegon NV, knowingly offer non-underwritten, generously-enhanced death benefits to maximize annuity sales to the rich and elderly.

And STATs don't hurt the terminally ill people who serve as annuitants, he said. They or their families receive cash they could not otherwise have obtained. Caramadre placed local ads in Providence offering money to the terminally ill. More than 110 people answered the ads and received \$2,000 each, Flanders said. Of those, 44 eventually signed annuity contracts.

Although the annuity purchases that Caramadre arranged overlapped in time with the financial crisis, and despite the fact that STATs can provide a form of investment insurance by guaranteeing premiums, the crisis had nothing to do with Caramadre's activities, Flanders told RIJ. "It just so happens that there was a financial crisis. That created a situation where the insurance companies had to pony up. Once they had to make good on the guarantees, they were incentivized into claiming there was fraud."

Advertisement "The thing to understand is that some insurance companies make a conscious decision not to include the kinds of restrictions that would prevent [STATs] to capture market share. Some insurers do require minimum holding periods, or insurable interests or relationships between the annuitant and beneficiary. But there are certain types of products issued by certain insurers where there are no such restrictions," Flanders added.

Caramadre's "service was to read through the fine print, to find the right products and steer his clients to the ones that permitted this," he maintained.

"This is a business decision made by insurers to capture market share. If you put in restrictions such as requiring health tests, you shrink the market. It's a conscious decision to capture premium. These products are marketed mostly to elderly retired people with short life expectancies. So there's obviously some risk-taking going on by the issuers. So how can they cry crocodile tears?"

A few members of the public—at least in Providence, R.I., a 375-year-old city as famous for its history of organized crime activity as for prestigious Brown University and the Rhode Island School of Design—appear to agree with Flanders' portrayal of Caramadre as a modern Robin Hood.

"This man aided the terminally ill people and their families, and took nothing from them," someone wrote on WJAR-TV's website after the Providence NBC affiliate broke the Caramadre story last fall. "Far from taking advantage of them, he helped them get money they otherwise had no access to.

"As for the insurance companies, he outsmarted them and took advantage of a loophole (assuming there was no forgery). As a financial planner, I am all too keenly aware of the sales process and features of annuity products which allow insurance companies to legally prey on less informed consumers. Kudos to someone who figured out how to beat them at their own game legally."

Neither of these sources directed their comments to the issue of whether the licensed representatives who earned commissions on the sale of contracts were aware that the annuitants who were recruited by Caramadre and his associates at Estate Planning Services were terminally ill and that the contracts would exist for only a matter of days, weeks or months at the most.

As for annuity executives who are just now hearing about some of the details of the schemes, they seemed shocked both personally and professionally. "This is so wrong on so many levels, it's hard to know where to begin," one insurance executive told RIJ. "It's harmful to the reputation of financial services. It's preying on people at the worst possible time."

He was stunned by the apparent failures of due diligence by the agents or representatives, the supervising broker-dealers, and the insurance companies. But he was most concerned about potential damage to the variable annuity business.

"This is almost like in blackjack, where the card counters can ruin the game for everyone if the casinos don't throw them out. If professional arbitrageurs can play and prey on the elderly, it could mean the end of these products," he said.

In a worst case scenario, he said, swindlers might conspire to finance the purchase of variable annuity living benefits by people in their mid-50s, for instance, and then arrange for the commencement of guaranteed lifetime withdrawals immediately after purchase. This type of pre-mediated adverse selection could wreck the financial engineering behind these products and make them impractical for insurers to offer without applying bulky restrictions or raising prices.