
VALIC Sued Over “Redundant” Tax Benefits

By Editor Test *Wed, Jan 13, 2010*

Lawsuits accusing insurers of selling tax-deferred annuities to fund tax-deferred accounts have not been entirely unfruitful for plaintiffs.

For the second time in a decade, Variable Annuity Life Insurance Company (VALIC) is the target of a class action suit alleging that managers and agents employed by the AIG subsidiary engaged in aggressive and unsuitable variable annuity sales practices.

The December 21, 2009 action claims that VALIC’s agents, disregarding warnings in NASD Notice to Members 99-35 and motivated by high commissions, sold tax-deferred annuities to people they knew would use them to fund tax-deferred retirement plans. The purchasers would have been better off with low-cost mutual funds, the suit said.

The national law firm Hagen Berman Sobol Shapiro LLP filed the suit in U.S. District Court, District of Arizona, on behalf of two California teachers, John and Brenda Hall, and others who bought VALIC annuities as far back as 1974. The suit seeks return of fees paid by plaintiffs, a jury trial, costs, and punitive damages.

Evelyn Curran, a spokesperson for VALIC, which was the defendant in a similar class action suited filed by the aggressive New York firm Milberg LLP in September 2001, furnished RIJ with a prepared statement, which said in part:

“VALIC is aware that John and Brenda Hall have recently filed a lawsuit in United States District Court for the District of Arizona. VALIC, however, has yet to receive any notice of service against any of the defendants named in the lawsuit at this time.

“VALIC understands that the Hall lawsuit alleges facts and claims that appear to be identical to the same alleged in James Drnek and Maureen Tiernan, et al. v. VALIC, et al., another class action lawsuit that was dismissed by a United States District Court in Arizona in 2005.

“That dismissal was affirmed on appeal in 2007. As was the case in Drnek, VALIC believes these allegations to be without merit and we anticipate a favorable resolution to the case.”

Oddly, a plaintiff in the Drnek case, Phillip Bobbitt, filed a class action lawsuit in U.S. District Court, State of Arizona, on November 2, 2009, charging Milberg LLP with professional negligence in their representation of Bobbitt and others in their failed suit against VALIC.

Lawsuits accusing insurers of selling tax-deferred annuities to fund tax-deferred accounts have not been entirely unfruitful for plaintiffs, however. In 2007, Pacific Life Insurance settled with clients of Milberg LLP—called “one of the best known and most feared class-action firms in America” by one writer—for \$60 million in a suit similar to the Halls’.

The average recovery per plaintiff in that case ("David J. Nelson and Samuel Cooper et al. v. Pacific Life") was said to be only \$7.23 per \$1,000 invested, or the equivalent of six month's M%E fees.

In that case, a notice Milberg LLP sent out in 2007 to purchasers of Pacific Life annuities read in part:

"The Settlement will provide \$60,000,000 in benefits to the Class, including a \$40,000,000 Cash Settlement Amount and a \$20,000,000 Contract Credit Settlement Amount. The Class includes all persons who, between August 19, 1998 and April 30, 2002, inclusive, purchased a Pacific Life individual variable deferred annuity contract, purchased a certificate to a Pacific Life group variable deferred annuity contract..., where such contract was used to fund a qualified contributory retirement plan (such as an IRA, a 401(k) plan or other retirement account."

The recently-filed Hall v. VALIC lawsuit charges, among other things, that:

- "VALIC, its successors and subsidiaries, as well as VALIC officers and directors, failed to disclose that the tax deferral feature of the deferred annuity was redundant and unnecessary for class members."
- "One agent who expressed concern to his manager that VALIC was 'thumbing their nose at 99-35,' was told that he did not 'have anything to worry about' because he was 'just an agent.' In fact, at least two agents were fired from VALIC after selling a client a mutual fund, rather than a variable annuity."
- "At [a training] session held in San Mateo, California in May 2001 for VALIC Agents in the western United States, Howard Weinthal, who was VALIC's National Sales Training Coordinator, and Mark Liebert, who was Director of New Representative Training, told the attendees that 'you can basically ignore 99-35.'
- "VALIC and VAMCO target 403(b) plan investors (mostly school, hospital and nonprofit organization employees) in particular for deferred annuity sales, and train their agents to recommend a deferred annuity to every prospective customer who is eligible to invest through a 403(b) plan investment, *without disclosing that the deferred annuity product is redundant and unnecessary, and regardless of whether the customer has an insurance need that is met by the product.* [original italics]"
- "[VALIC] sales training materials explicitly tell agents to *recommend* deferred annuities as categorically appropriate for *all* qualified plan investors. In August 2000, VALIC senior compliance personnel from the home office in Texas told a convention of hundreds of VALIC Agents gathered in Las Vegas that the agents did not need to worry about scrutiny relating to the company's non-compliance with NASD NTM 99-35 or relating to private lawsuits by deceived investors, because 'VALIC is a big company that can withstand challenges to its sales practices.'"