

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

**LINDA L. MOONEY and  
LIESELOTTE W. THORPE  
on behalf of themselves and all  
others similarly situated,**

**Plaintiff**

**Case No. 06-cv-00545 (ADM/FLN)**

**v.**

**AMENDED CLASS ACTION  
COMPLAINT AND DEMAND  
FOR JURY TRIAL**

**ALLIANZ LIFE INSURANCE COMPANY  
OF NORTH AMERICA,**

**Defendant.**

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Plaintiffs Linda L. Mooney and Lieselotte W. Thorpe, on behalf of themselves and all others similarly situated, brings this action against Defendant Allianz Life Insurance Company of North America (“Allianz”). Based upon personal knowledge, information and belief, and the investigation and research of their counsel, Plaintiffs allege as follows:

**NATURE OF THE ACTION**

1. Plaintiffs bring this action on behalf of themselves and all other similarly situated policyholders who from February 9, 2000 to the present purchased one or more Allianz Life Insurance Company of North America two-

tiered equity-index annuities promising an upfront or immediate (collectively referred to as “upfront”) premium bonus.

2. Allianz deceptively and fraudulently marketed its “upfront” premium bonus to individuals for the purpose of enticing them to purchase Allianz’s two-tiered equity-index annuities.

3. As a result, Allianz reaped hundreds of millions of dollars in increased revenues, while Plaintiffs and Class members were locked into a product with indefinite surrender penalty periods and an annuitization requirement that Allianz knew or should have known will not likely ever occur.

### **JURISDICTION AND VENUE**

4. The Court has original jurisdiction over this action pursuant to Section 4 of the Class Action Fairness Act and 28 U.S.C. § 1332(d)(2)(A), because the matter in controversy exceeds \$5,000,000.00, exclusive of interest and costs, and Plaintiffs are citizens of different States than Allianz. Plaintiffs also allege, upon information and belief, that fewer than one-third of all Class members reside in the State of Kansas or Florida.<sup>1</sup>

5. Venue is proper pursuant to 28 U.S.C. § 1391(b).

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<sup>1</sup> According to Allianz’s 2005 A.M. Best Report, its geographical direct premium distribution was: California (12.0%); Florida (11.4%); Texas (8.2%); Illinois (4.9%); Ohio (4.8%); other jurisdictions (58.7%). Given that the report appears to identify states with the largest direct premium distributions, the necessary implication is that Kansas’s statistics are less than 4.8%.

## THE PARTIES

6. Plaintiff Linda L. Mooney is a 65-year-old retiree who at all times relevant to these proceedings was, and is, a resident and citizen of the State of Kansas. On or about April 13, 2005, Mrs. Mooney, at the age of 64, purchased an Allianz MasterDex 10 equity-index annuity (Policy No. 70275706) and made a premium payment in the amount of \$216,189.39. Plaintiff purchased the Allianz annuity because Allianz promised to pay her an upfront 10% premium bonus in the amount of approximately \$21,618.00.

7. Plaintiff Lieselotte W. Thorpe is a 65-year old retiree who at all times relevant to these proceedings was, and is, a resident and citizen of the State of Florida. On or about August 25, 2005, Ms. Thorpe, at the age of 64, purchased two Allianz MasterDex 10 equity-index annuities (Policy Nos. 70343122 and 70340680) and made premium payments in the amount of \$102,587.23 and \$206,605.89 respectively. Plaintiff Thorpe purchased the Allianz annuities because Allianz promised to pay her upfront 10% premium bonuses in the amounts of approximately \$10,258.00 and \$20,660.00.

8. Allianz is a for-profit corporation organized under the laws of Minnesota with its principal place of business and headquarters located at 5701 Golden Mills Drive, Minneapolis, Minnesota 55416-1297.

## **FACTS RELATING TO LINDA L. MOONEY**

9. In early 2004, Mrs. Mooney, then a 63-year-old retired school nurse, purchased a fixed annuity from TransAmerica Life Insurance & Annuity Company's ("TransAmerica") insurance agent, Mark W. Miller.

10. On or about April 13, 2005, Mrs. Mooney met with Mr. Miller again for an annual "financial check-up." At that time, Mr. Miller was also an Allianz insurance agent (Allianz Agent No. 634-012556).

11. At the time of the meeting, Mrs. Mooney's TransAmerica fixed annuity had a cash value of approximately \$232,525.08 and a surrender value of approximately \$216,189.39.

12. During this meeting, Mr. Miller, acting as an Allianz insurance agent, recommended that Mrs. Mooney replace her existing TransAmerica fixed annuity with an Allianz MasterDex 10 equity-index annuity because the Allianz product paid an "upfront" premium bonus of 10% and had the potential to grow in value in accordance with the S&P 500 market index.

13. As part of its standardized sales and annuity application process, Allianz requires all of its agents, including Mr. Miller, to use its standardized sales materials to promote the product and help consummate the sale thereof. These standardized sales and annuity application documents include but are not limited to

the *MasterDex 10 Consumer Brochure*, the *MasterDex 10 Statement of Understanding* and the *Application for Annuity*.

14. Allianz's standardized sales and annuity application process required Mrs. Mooney to read and/or sign a *MasterDex 10 Consumer Brochure* and a *MasterDex 10 Statement of Understanding* prior to purchasing the Allianz two-tiered equity-index annuity. (See Exs. 1 and 2 respectively.)

15. As explained in more detail below, the *MasterDex 10 Consumer Brochure* falsely stated that the product provided an "upfront" premium bonus that would overcome the surrender charges from her TransAmerica annuity. (See page 11 of Ex. 1.)

16. The *MasterDex 10 Consumer Brochure* is incorporated by reference into the *MasterDex 10 Statement of Understanding* directly above where Mrs. Mooney was required to sign. (See page 3 of Ex. 2.) The *MasterDex 10 Statement of Understanding* required Mrs. Mooney to sign and acknowledge that she read the contents of the *MasterDex 10 Consumer Brochure*. (See page 3 of Ex. 2.)

17. In addition, as part of its standardized annuity application process, Allianz required its agent, Mr. Miller, to sign the *MasterDex 10 Statement of Understanding* and acknowledge that he had presented and provided a signed copy of the *Statement of Understanding* to Mrs. Mooney and that he had not made

statements that differed from the disclosure form and no promises or assurances have been made about the future values of the policy. (See page 3 of Ex. 2.)

18. In addition to requiring Mrs. Mooney to review and/or sign the above-described standardized documents, Allianz also required Mrs. Mooney to complete and sign an *Application for Annuity*. (See Ex. 3.)

19. As the final part of its standardized sales and annuity application process, Allianz required its agent, Mr. Miller, to send all of the above described documents along with Mrs. Mooney's premium payment of approximately \$216,000.00 to Allianz's headquarters in Minneapolis, Minnesota. Mrs. Mooney's premium payment was placed in Allianz's general corporate account, presumably in Minnesota.

20. After receiving all of the standardized documents and the premium payment, Allianz accepted Mrs. Mooney's application in Minnesota and issued the insurance policy from Minnesota to her residence in Kansas. (See Ex. 4.)

21. In short, all of the documents that Mrs. Mooney reviewed and/or signed were created and disseminated from Allianz's headquarters in Minnesota and were required to be returned (along with premium payments) to Minnesota prior to the issuance of the policy to Mrs. Mooney.

22. By requiring its agents to use only Allianz's company-approved materials, Allianz has ensured that the sales presentations made by the agents and

annuity application process uniformly portray what it considers to be the essential features of the product regardless of the individual variations in the one-on-one presentations.

23. These Allianz standardized materials contained many undefined insurance industry-specific terms that were not readily understandable to Mrs. Mooney.

24. Despite the complexity of the boilerplate language contained in these documents, the documents clearly stated that Mrs. Mooney would receive an “upfront” bonus that would more than offset the surrender charges on her existing TransAmerica policy if she purchased the Allianz MasterDex 10 annuity. In fact, Allianz’s standardized documents stated that the “upfront” bonus would make the replacement profitable for Mrs. Mooney because the amount of the bonus was more than the surrender penalty.

25. In reality, however, the Allianz MasterDex 10 equity-index annuity was a two-tiered annuity that did not provide an “upfront” bonus and did not offset or overcome the surrender charges suffered by Mrs. Mooney.

26. In addition, the standardized sales and annuity application materials, including the insurance policy, contained many other false statements and/or omissions that are described in detail in the section of this complaint entitled *Allianz’s Misstatements and Omissions*.

27. Based on Allianz's misleading and deceptive sales materials, on or about April 13, 2005, Mrs. Mooney purchased an Allianz MasterDex 10 two-tiered equity-index annuity with a premium of approximately \$216,000.00.

28. Mrs. Mooney has been damaged as a result of her purchase.

**FACTS RELATING TO LIESELOTTE W. THORPE**

29. On or about August 25, 2005, Ms. Thorpe met with Jeffrey W. Goldfine, an Allianz insurance agent (Allianz Agent No. 396010330) at her home in Hollywood, Florida.

30. At the time of this meeting, Ms. Thorpe owned two American Investors Life/AmerUs equity-index annuities with values of \$206,605.89 (Policy No. 072940) and \$102,587.23 (Policy No. 072939).

31. Using the sales materials provided by Allianz, Mr. Goldfine, acting as an Allianz insurance agent, pointed out to Ms. Thorpe that she would receive an immediate 10% bonus on any amount that she transferred from AmerUs to purchase the MasterDex 10 equity-index annuity(s).

32. Just like the circumstances surrounding Mrs. Mooney's purchase, Allianz also required Mr. Goldfine to use its standardized sales materials to promote the product and help consummate the sale of the MasterDex 10 annuities to Ms. Thorpe. These standardized sales and annuity application documents

include but are not limited to the *MasterDex 10 Consumer Brochure*, the *MasterDex 10 Statement of Understanding* and the *Application for Annuity*.

33. Allianz's standardized sales and annuity application process required Mrs. Mooney to read and/or sign a *MasterDex 10 Consumer Brochure* and a *MasterDex 10 Statement of Understanding* prior to purchasing the Allianz two-tiered equity-index annuity. (See Ex. 1 and Ex. 5.)

34. As explained in more detail below, the *MasterDex 10 Consumer Brochure* falsely stated that the product provided an "upfront" premium bonus. (See page 11 of Ex. 1.)

35. Upon information and belief, the *MasterDex 10 Consumer Brochure* is incorporated by reference into the *MasterDex 10 Statement of Understanding* directly above where Ms. Thorpe was required to sign. (See page 1 of Ex. 5.) Upon information and belief, the *MasterDex 10 Statement of Understanding* required Ms. Thorpe to sign and acknowledge that she read the contents of the *MasterDex 10 Consumer Brochure*. (See page 1 of Ex. 5.)

36. In addition, upon information and belief, as part of its standardized annuity application process, Allianz required its agent, Mr. Goldfine, to sign the *MasterDex 10 Statement of Understanding* and acknowledge that he had presented and provided a signed copy of the *Statement of Understanding* to Ms. Thorpe and

that he had not made statements that differed from the disclosure form and no promises or assurances have been made about the future values of the policy.

37. In addition to requiring Ms. Thorpe to review and/or sign the above-described standardized documents, Allianz also required Ms. Thorpe to complete and sign an *Application for Annuity* for each MasterDex 10 annuity purchased. (See Ex. 6 and Ex. 7.)

38. As the final part of its standardized sales and annuity application process, Allianz required its agent, Mr. Goldfine, to send all of the above described documents along with Ms. Thorpe's premium payments of approximately \$206,605.89 and \$102,587.23 to Allianz's headquarters in Minneapolis, Minnesota. Ms. Thorpe's premium payments were placed in Allianz's general corporate account, presumably in Minnesota.

39. After receiving all of the standardized documents and the premium payments, Allianz accepted Ms. Thorpe's applications in Minnesota and issued two insurance policies (Policy Nos. 70343122 and 70340680) from Minnesota to her residence in Florida. (See Ex. 8 and Ex. 9.)

40. Just like Mrs. Mooney, all of the documents that Ms. Thorpe reviewed and/or signed were created and disseminated from Allianz's headquarters in Minnesota and were required to be returned (along with premium payments) to Minnesota prior to the issuance of the policies to Ms. Thorpe.

41. By requiring its agents to use only Allianz's company-approved materials, Allianz has ensured that the sales presentations made by the agents and annuity application process uniformly portray what it considers to be the essential features of the product regardless of the individual variations in the one-on-one presentations.

42. These Allianz standardized materials contained many undefined insurance industry-specific terms that were not readily understandable to Ms. Thorpe.

43. Despite the complexity of the boilerplate language contained in these documents, the documents clearly stated that Ms. Thorpe would receive an "upfront" bonus if she purchased the Allianz MasterDex 10 annuities.

44. In reality, however, the Allianz MasterDex 10 equity-index annuity was a two-tiered annuity that did not provide an "upfront" bonus.

45. In addition, the standardized sales and annuity application materials, including the insurance policy, contained many other false statements and/or omissions that are described in detail in the section of this complaint entitled *Allianz's Misstatements and Omissions*.

46. Based on Allianz's misleading and deceptive sales materials, on August 25, 2005, Ms. Thorpe purchased two Allianz MasterDex 10 two-tiered

equity-index annuities with premium payments of approximately \$206,605.89 and \$102,587.23.

47. Ms. Thorpe has been damaged as a result of her purchase.

## **I. ALLIANZ'S DECEPTIVE SALES AND MARKETING PRACTICES**

### **A. BACKGROUND**

#### **1. GENERAL DEFINITION**

48. An annuity by definition is “a form of contract sold by life insurance companies that guarantees a fixed or variable payment to the annuitant at some future time, usually retirement.” *Barron's Dictionary of Finance & Investment Terms* 24 (4th ed. 1995). When a customer invests in an annuity, a contract is entered with the issuing company under which in return for the premium payment, the company promises the policyholders a stream of payments starting immediately or at a designated time in the future. There are basic distinctions between types of annuities:

#### **2. FIXED ANNUITY**

49. *Fixed Annuity*. A fixed annuity is a life insurance plan in which an investor pays an insurance company a sum of money in exchange for a guaranteed amount over time. Fixed annuities are invested primarily in bonds in the issuing company's general account. The products are not considered to be securities and are sold through a traditional insurance policy instead of a lengthy prospectus. As

a result, the issuance and sale of fixed annuities are not closely monitored or scrutinized by securities regulators. Agents who sell fixed annuities are not closely supervised, do not have the same credentials and are not required to perform the same suitability analysis as the agents selling securities such as variable annuities.

### **3. IMMEDIATE VERSUS DEFERRED ANNUITY**

50. *Immediate versus Deferred.* The distinction between an immediate and a deferred annuity relates to when the policy is eligible to be annuitized. When a policyholder annuitizes an annuity, he or she gives the insurance company a sum of money or premiums (surrenders ownership of the premiums to the insurance company) in exchange for a stream of payments over time.

51. In an immediate annuity, the policy annuitizes immediately and the insurance company agrees to start making payments soon after the contract is signed. A deferred annuity, on the other hand, requires the policyholder to wait a period of time (usually many years) before a policy is eligible for annuitization. During the deferral period, the policyholder retains ownership of the premiums and those premiums have the ability to grow tax-free. 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.

52. 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, however, issuers 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.

53. Equity-index annuities are considered to be deferred-fixed annuities because annuitization is deferred for many years after the premiums are paid and the policyholder is generally guaranteed a fixed rate of return recalculated each year. The returns on equity-index annuities fluctuate in accordance with the returns in market indices such as the S&P 500 and NASDAQ 100 (commonly referred to as “index returns”). Despite this fluctuating rate of return, equity-index annuities retain their status as fixed annuities because the product is typically guaranteed not to lose money in the market indices.

54. Because they are classified as deferred-fixed products, most equity-index annuities are not currently considered to be securities under state or federal law. As a result, the products are not sold through a prospectus and the regulations governing sale of the products, as described above, are less stringent. Upon information and belief, since at least January 2000, over 95% of all Allianz equity-

index annuities were sold by its agents not associated with a broker-dealer and, therefore, not licensed to sell securities. In addition, none of the two-tiered annuities at issue have been determined to be securities under federal and/or state securities laws.

#### **4. ONE-TIERED VS. TWO-TIERED ANNUITIES**

55. *One-Tiered vs. Two-Tiered Annuities.* Historically, virtually all equity-index annuities have been classified as one-tiered deferred-fixed annuity products.<sup>2</sup> 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.

56. 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.

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<sup>2</sup> Upon information and belief, there are currently approximately 221 equity-index annuities offered on the market. Of that amount, 217 are one-tiered annuities.

57. A two-tiered equity-index annuity is a rare type of deferred-fixed annuity that is fundamentally different from a one-tiered equity-index annuity.<sup>3</sup> In a two-tiered deferred-fixed 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 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.

58. 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.

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<sup>3</sup> Upon information and belief, of the four two-tiered equity-index annuities currently offered on the market, Allianz issues three of them. They are the Allianz MasterDex 10, 10% Bonus PowerDex Elite and the BonusDex Elite.

59. In a two-tiered equity-index annuity, the “higher interest rate” credited to the Annuity 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 Annuity 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 Annuity Value and the entire premium bonus, but is also subjected to an indefinite surrender penalty on the Cash Value.

60. 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 Annuity 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).<sup>4</sup>

## **B. ALLIANZ’S MISSTATEMENTS AND OMISSIONS**

61. Allianz falsely markets to consumers and encourages its agents to represent that its two-tiered equity-index annuities offer an “upfront” bonus in

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<sup>4</sup> 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 Annuity Value.

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.

62. 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.

63. For example, Allianz’s website states in pertinent part, as follows:

Allianz Life Insurance Company of North America (Allianz Life<sup>®</sup>) offers bonus annuities that give you a premium bonus of up to 10% as well as a fixed interest rate – making our products a great tool for wealth accumulation. These products are a great way to help:

- Recover losses
- Overcome surrender charges
- Pay capital gains taxes
- Save for retirement

(See Ex. 10.)

64. In addition, Allianz’s *Consumer Brochure(s)*, which are made available to all prospective two-tiered equity-index annuity policyholders prior to the purchase, also states in pertinent part, as follows:

Is the MasterDex 10 Annuity the right choice for your retirement plans? ... The MasterDex 10 Annuity offers a combination of benefits you may not find in another financial product. It merits your careful consideration if:

- You would appreciate **receiving an up-front bonus** to help regain market losses or recoup surrender charges (or if you just plain enjoy getting a bonus!) (emphasis added).

(See page 11 of Ex. 1.)<sup>5</sup>

65. The MasterDex 10 *Consumer Brochure* also states that the policyholder will receive an “immediate” bonus on the initial premium amount.

(See page 4 of Ex. 1.)

66. 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 (1) annuitizes the entire policy after waiting at least five years (deferral period) and (2) 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.

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<sup>5</sup> As stated in Footnote 3, the MasterDex 10 is one of three two-tiered equity-index annuities offered by Allianz. The *Consumer Brochures* for the other two-tiered equity-index annuities offered by Allianz, the 10% Bonus PowerDex Elite and the BonusDex Elite, also refer to the premium bonus as an “up-front” or “immediate” bonus. (See page 11 of attached Exhibit 11 and page 3 of attached Exhibit 12).

67. 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).

68. 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.

69. 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>6</sup>

70. 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

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<sup>6</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 12-1/2% surrender charge.

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. For example, in its MasterDex 10 *Consumer Brochure*, Allianz states,

Down the road, how can I get the full value of my annuity? After five policy years, you can receive the full value of your MasterDex 10 annuity by choosing an income stream lasting 10 years or longer. This is called annuitization.

(See page 8 of Ex. 1.)<sup>7</sup> 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.

71. Furthermore, Allianz’s standardized insurance policy falsely states in a policyholder-specific illustration that the policyholder is guaranteed to receive the premium bonus if the policy is annuitized during the first five years. (See page 6 of Ex. 4, page 16 of Ex. 8, and page 16 of Ex. 9.) The illustration 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.

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<sup>7</sup> The same misleading language can also be found in the 10% Bonus PowerDex Elite Annuity *Consumer Brochure*. (See page 6 of Ex. 11.) The BonusDex Elite Annuity *Consumer Brochure* fails even to attempt to define annuitization at all. (See Ex. 12.)

72. 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.

73. The deceptive error contained in the illustration will apply to every Class member 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.

**C. ALL OF ALLIANZ'S DECEPTIVE MARKETING AND SALES PRACTICES EMANATE FROM ITS HEADQUARTERS IN MINNESOTA**

74. All of the annuity products at issue in this case sold by Allianz are prepared, issued and ultimately accepted from and at Allianz's Minneapolis, Minnesota headquarters.

75. In addition, the contents on its website are approved by Allianz at its headquarters in Minnesota.

76. Allianz requires all of its agents to use only written standardized forms that must be returned to Allianz's headquarters in Minnesota 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.

77. Allianz requires all policyholders to review and/or sign Allianz's *Consumer Brochure(s)*, *Statement of Understanding* and *Application for Annuity* prior to the acceptance and issuance of each policy by Allianz in Minnesota.

78. All of the *Consumer Brochure(s)* are created and disseminated from Allianz's headquarters in Minneapolis, Minnesota. In fact, Allianz's Minnesota address and toll-free number are listed on the last page of each *Consumer Brochure*. (See page 12 of Ex. 1, page 12 of Ex. 11 and page 8 of Ex. 12.) Presumably, if a prospective policyholder had a question about the product, he or she could write or call Allianz in Minnesota. The *Consumer Brochure(s)* also clearly state that "all policies are issued by Allianz Life Insurance Company of North America" which is located in Minneapolis, Minnesota. (See page 12 of Ex. 1, page 12 of Ex. 11 and page 8 of Ex. 12.)

79. Prior to purchasing an Allianz two-tiered equity-index annuity, Allianz requires its prospective customers to read and/or sign the *Statement of Understanding*.<sup>8</sup> Just like the *Consumer Brochure(s)*, Allianz's Minnesota address and toll-free telephone number are listed at the top of each *Statement of Understanding*. (See page 1 of Ex. 2, page 1 of Ex. 13, and page 1 of Ex. 14.) The *Statement of Understanding* incorporates by reference the particular *Consumer Brochure* and requires each prospective policyholder to acknowledge in writing

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<sup>8</sup> The *Statement of Understanding* for the 10% Bonus PowerDex Elite and the BonusDex Elite are attached as Exhibits 13 & 14.

that they have received and read the particular *Consumer Brochure*. (See page 3 of Ex. 2, page 3 of Ex. 13, and page 2 of Ex. 14.)

80. Each *Statement of Understanding* also requires the Allianz agent selling the product to sign the document and attest as follows:

“I have presented and provided a signed copy of this disclosure to the owner. I have not made statements that differ from the disclosure form and no promises or assurances have been made about the future values of the policy.”

(See page 3 of Ex. 2, page 3 of Ex. 13, and page 2 of Ex. 14.)

81. In addition, the *Application for Agent Agreement*, which must be completed and filed by a prospective Allianz agent, states as follows

“All policies will be represented according to their applicable provisions... Full disclosure will be made regarding all policy features and conditions relevant to the receipt of benefits. All advertisements that are not produced by the Company will receive the written approval of the Company prior to use.”

(See Ex. 15.)

82. As a result, the only information that the customer has been provided at the time of the sale is the information contained in the applicable *Consumer Brochure* and the *Statement of Understanding*.

83. Once a prospective policyholder decides to purchase the particular product, Allianz requires them to complete and sign an Allianz standardized *Application for Annuity*. The *Application for Annuity* contains the same Allianz Minnesota address listed at the top of the first page. (See page 1 of Ex. 3, page 1 of

Ex. 6, and page 1 of Ex. 7.) Agents are required to submit the signed *Statement of Understanding* and *Application for Annuity* along with the policyholders' initial premium payments to Allianz's headquarters in Minnesota when the sale is made. Once Allianz headquarters receives the *Application for Annuity*, the *Statement of Understanding*, and the initial premium payment, Allianz issues the policy in Minnesota and sends the policyholder a copy of its terms.

84. The insurance policy also has Allianz's Minnesota address listed on the first page of the policy. (See page 1 of Ex. 4, page 1 of Ex. 8, and page 1 of Ex. 9.) If a policyholder has a question about the product after it is purchased, the policyholder is directed to call Allianz's headquarters in Minnesota for answers.

85. By requiring its agents to follow a standardized sales and annuity application procedure, Allianz has ensured that every policyholder has received and will receive the above-listed misstatements and omissions contained in its standardized documents. In addition, Allianz has also ensured that the presentations made by the agents uniformly portray what it considers to be the essential features of the product regardless of the individual variations in the one-on-one presentations. As a result, class treatment is appropriate and necessary.

**D. ALLIANZ HAS BENEFITED AND CONTINUES TO BENEFIT FROM ITS DECEPTIVE MARKETING AND SALES PRACTICES**

86. This deceptive and widespread marketing and sale of “upfront” bonuses has been a bonanza for Allianz. According to Allianz’s 2004 Annual Financial Report, the company generated approximately \$807 million in premium income from annuities in 2000; \$1.7 billion in 2001; \$7.9 billion in 2002; \$8.5 billion in 2003; and \$12.4 billion in 2004. Upon information and belief, since 2004, the MasterDex 10, the 10% Bonus PowerDex Elite and the BonusDex Elite two-tiered annuities were collectively the most popular annuities sold by Allianz, because the products purport to pay customers an “upfront” premium bonus. Not coincidentally, Allianz offers higher bonuses with its two-tiered equity-index annuities than it does with its one-tiered equity-index annuities in order to make them most attractive to prospective policyholders.

87. In comparison with its competitors, Allianz has exponentially increased its dominance in the industry because of its misleading marketing and sales of the “upfront” bonus it claims its policyholders will receive with its two-tiered equity-index annuities. In the Third Quarter of 2005 alone, Allianz sold \$2,171,020,000.00 of equity-index annuities as contrasted with its closest competitor, American Equity, which sold only \$678,417,172.00 of one-tiered annuities. In addition, the MasterDex annuity line was the most popular in the

entire industry in 2005.<sup>9</sup> Upon information and belief, the MasterDex 10 comprised most of the sales in the MasterDex equity-index annuity line. American Equity does not sell any two-tiered equity-index annuities and, therefore, Allianz's dominance in the equity-index annuity market is attributed to the misleading marketing and sales of its two-tiered equity-index annuities.

**E. ALLIANZ FAILS TO ADEQUATELY TRAIN ITS AGENTS AND PAYS THEM EXTREMELY HIGH COMMISSIONS TO SELL ITS TWO-TIERED EQUITY-INDEX ANNUITIES**

88. Allianz sells its two-tiered annuities through agents who are not adequately trained to understand the product and are not adequately supervised.

89. Although Allianz's headquarters in Minnesota provides sales information, marketing material and direct sales support to the agents in the field, the company profits from the agents' limited knowledge of the product. If problems do arise and customers seek assistance with their annuity, Allianz's policy is to have the customer contact Allianz directly in Minnesota. Purchasers are, therefore, left to rely upon Allianz's standardized sales materials which deceptively describe the product and omit crucial policy terms which, among other things, would warn a purchaser that two-tiered equity-index annuities are rare products in the industry; that its bonus is not received "upfront" and that the bonus

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<sup>9</sup> The Allianz MasterDex equity-index annuity line comprises of the MasterDex, MasterDex 5 and the MasterDex 10. The MasterDex and the MasterDex 5 are one-tiered equity-index annuities, while the MasterDex 10 is a two-tiered equity-index annuity.

does not offset investment losses, surrender penalties and/or capital gains taxes on previous investments.

90. Allianz created and disseminated its standardized sales literature, annuity applications and policies from its headquarters in Minnesota with the intent that purchasers would rely on its contents. Allianz has, therefore, virtually guaranteed that its customers will not understand anything about its complicated features beyond the carefully tailored written materials.

91. Agents are easily recruited to sell equity-index annuities and two-tiered annuities because they need little in the way of educational background or training to qualify for a state license to sell insurance products, and they receive extremely high commissions for selling these products.

92. For example, it is generally understood in the securities industry that commissions paid to brokers on variable annuity products range from 5% to 7%. This range is considered to be extremely high when contrasted to equivalent mutual funds and other long-term investments. As a result, the mainstream media (and regulators) vilified variable annuity sales practices over the last six years, in part because the high commissions provide brokers with large incentives to sell the products even though they are not suitable for most investors. In addition, high commissions do nothing but increase costs to the customer and surrender penalties.

93. The commissions Allianz paid to agents for selling two-tiered equity-index annuities dwarf the 5% to 7% commissions paid to brokers for variable annuities. Upon information and belief, as of December 2000, 72% of all equity-index annuities sold to consumers paid agents 9% or more in commissions, with 40% of all sales paid agents over 11%. Upon information and belief, all three of the two-tiered equity-index annuities offered by Allianz pay 9% or more commissions to its agents.

94. Allianz's decision to pay its agents excessively high commissions was made directly from its headquarters in Minnesota. In addition, Allianz pays commissions to its agents directly from its headquarters in Minnesota.

**F. ALLIANZ ADMITS THAT THE RELATIONSHIP WITH ITS POLICYHOLDERS IS BASED ON TRUST AND RELIANCE ON ALLIANZ'S SUPERIOR PRODUCT KNOWLEDGE**

95. Allianz has repeatedly acknowledged and affirmed that its obligations to its policyholders are premised upon trust and confidence and that it has a duty to provide prospective policyholders with adequate information regarding the attributes of its products prior to purchase. For example, all policyholders receive their annuity policy several weeks after they purchase the product. The standardized cover letter attached to the policy states in bold print at the top of the page, **"Thank you for your business - and your trust."** The standardized cover letter also states as follows,

“You have honored us by entrusting a portion of your financial future to us. We acknowledge our responsibility to you and your family or business. Rest assured, we will take very good care of your money... Along with our exceptional customer service and financial strength, these innovative products clearly define us as a financial services company for the next century.” (emphasis added)

(See page 1 of attached Ex. 4, page 1 of Ex. 8, and page 1 of Ex. 9.)

96. Therefore, Allianz holds itself out as a confidant and provider of financial services to its prospective and current policyholders and encourages them to reveal private and confidential financial information.

97. Allianz encourages both prospective and current policyholders to rely on its superior knowledge and expertise in purchasing and maintaining their annuity products.

98. Annuity policies sold to its customers are prepared by Allianz and are not subject to negotiation. Policyholders, therefore, do not possess bargaining power equal to that of Allianz.

99. As illustrated by the *Statement of Understanding(s)* and the *Application for Agent Agreement*, Allianz has complete control over the marketing and sales materials that its sales agents distribute to prospective customers, including charts, projections, and policies that misstate the features of the product and the premium bonus.

100. Allianz intended that Plaintiffs and Class members rely on these fraudulent and deceptive practices.

## **II. INJURIES TO THE CLASS**

101. As a result of the aforementioned, Plaintiffs and the Class members have been damaged and will continue to suffer damages including, but not limited to:

a. Losses, forfeitures and deprivation of the premium bonus and positive index returns;

b. Surrender charges, forfeitures, penalties, capital gains tax, investment losses incurred and/or realized as a result of replacing one-tiered annuities with Allianz's two-tiered annuities;

c. Commission charges and other administrative costs associated with the purchase and maintenance of these annuities; and

d. Other financial hardship losses and detriment, including but not limited to adverse tax implications and consequences due to the nature of annuity purchases generally and the surrender of existing assets to make such purchases.

## **III. CLASS ACTION ALLEGATIONS**

102. Plaintiffs Linda L. Mooney and Lieselotte W. Thorpe bring this action on behalf of themselves and all other individuals similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b). The class of persons to which Plaintiffs seek to represent is defined as:

All individuals who from February 9, 2000 to the present purchased one or more Allianz Life Insurance Company of North America two-

tiered equity-index annuities promising an upfront or immediate premium bonus.

103. The Class excludes Defendant, any parent, subsidiary or affiliate of the defendant, any entity in which defendant has a controlling interest, and the respective officers, directors, employees, agents, legal representatives, heirs, predecessors, successors, and assigns of such excluded persons or entities.

104. This case is properly brought as a class action under Rules 23(a) and (b) of the Federal Rules of Civil Procedure for the reasons set forth in the following paragraphs.

105. Numerosity under Fed. R. Civ. P. 23(a)(1). The members of the Class are so numerous that separate joinder of each member is impracticable. On information and belief, the number of individuals qualifying for class membership exceeds 100,000 persons and all of those individuals can be readily identified through defendant's records. Therefore, class notice can easily be mailed to all Class members in the event that the Class is certified by this Court.

106. Commonality under Fed. R. Civ. P. 23(a)(2). There are numerous, substantial questions of law and fact common to the Class relating to Allianz's centrally orchestrated scheme which was directed and implemented in a uniform fashion toward members of the Class. The common questions include, but are not limited to:

a. Whether Allianz has engaged in a marketing campaign to misrepresent the premium bonus as an “upfront” bonus in order to convince individuals to purchase its two-tiered equity-index annuities;

b. Whether Allianz failed to disclose material information concerning suitability, impact of and detriments from using some or all of the cash value of an existing life insurance policy or annuity to purchase a new Allianz two-tiered equity-index annuity by means of a lapse, surrender or withdrawal/partial surrender of a life insurance policy or annuity, or life insurance policy loan.

c. Whether Allianz developed, encouraged and engaged in a scheme designed to sell two-tiered equity-index annuities to its existing policyholders through the concealment of material facts;

d. Whether Allianz targeted prospective customers who had existing investments with surrender penalties for the sale of Allianz two-tiered equity-index annuities;

e. Whether Allianz paid extraordinarily high commissions to its appointed agents for sales of two-tiered equity-index annuities;

f. Whether Allianz intentionally and/or negligently misrepresented or omitted critical information in its written materials regarding bonus terms;

g. Whether Allianz has directly or indirectly caused any untrue deceptive or misleading information about the two-tiered equity-index annuity to be made, published, disseminated, circulated, delivered to, or placed before the consumer public;

h. Whether Allianz has used any advertisement that would mislead or otherwise cause a reasonable person to believe that the upfront premium bonus applied to the Annuitization Value was in fact received upfront and that the bonus would offset investment losses, surrender charges and capital gain tax on previous investments;

i. Whether Plaintiffs and members of the Class are entitled to damages, specific performance, injunctive relief, restitution, disgorgement and equitable relief against Allianz;

107. The amount of restitution and damages awardable to Plaintiffs and each Class member can easily be determined from Allianz's computer records.

108. There is no need for any manual computation of these amounts because, among other things, the precise amount of money unreasonably, unlawfully, unfairly and wrongfully taken from Plaintiffs and each Class member can be computed through the data processing system possessed by Allianz.

109. Typicality under Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of the Class because Allianz engaged in a single, centralized marketing

scheme through the use of an “upfront” premium bonus to induce individuals to purchase Allianz’s two-tiered equity-index annuities.

110. All materials used to perpetrate and continue this fraudulent and deceptive scheme were designed and originated from the corporate headquarters in Minnesota and all contracts issued for the annuities were between the policyholders and Allianz in Minnesota.

111. Plaintiffs and Class members are likewise the victim of high commissions and also subject to indefinite surrender penalties and forfeitures for surrendering premiums.

112. Adequacy of Representation under Fed. R. Civ. P. 23(a)(4). Plaintiffs are adequate representatives of the Class. Plaintiffs purchased Allianz two-tiered annuities during the Class Period and suffered surrender penalties, forfeitures, and other losses.

113. Plaintiffs were misled and deceived by materials directly provided to them by Allianz and they relied on those misleading and fraudulent sales materials approved by Allianz. Plaintiffs were not provided with disclosures that the bonus was not an “upfront” bonus and that other fees such as surrender fees on existing investments could be levied against them.

114. Plaintiffs are committed to the vigorous prosecution of this action on behalf of themselves and all other individuals similarly situated. To this end, they

have retained competent counsel, experienced in this type of complex civil litigation. Moreover, there is no hostility between Plaintiffs and the unnamed Class members.

115. Plaintiffs anticipate no difficulty in the management of this litigation as a class action. The law firms of Page Perry, LLC, The Nygaard Law Firm, and Chestnut & Cambronne, P.A. have the financial resources to meet the substantial costs and legal issues associated with this type of litigation. These firms have extensive experience in representing purchasers of annuities and other insurance products and The Nygaard Law Firm and Chestnut & Cambronne, P.A. has previously represented classes of policyholders in class actions against insurance companies in federal courts located in several states, including this federal district.

116. Predominance under Fed. R. Civ. P. 23(b)(3). The numerous, substantial questions of law and fact common to the Class related to Allianz's centrally orchestrated scheme predominate over any individual issues of law and fact. As such, paragraph 106 is re-alleged and incorporated by reference.

117. The basic premise in this case is that Allianz deceptively used and continues to use the "upfront" premium bonus as the primary way to entice individuals to purchase its two-tiered equity-index annuities. The culpability of Allianz is made worse because it possesses knowledge that the premium bonus is

not an upfront bonus and that the bonus will never be paid, because Allianz knows or should know that less than 5% of all policyholders will ever elect to annuitize.

118. In addition, no policy is issued until a prospective policyholder reviews and/or signs Allianz's standardized sales materials, annuity applications and disclosure forms. All of these standardized documents are submitted to Allianz and ultimately reviewed and approved by the insurance company in Minnesota.

119. Superiority under Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of this controversy herein because (a) individual claims by Plaintiffs or the Class members are impractical as the costs of pursuit far exceed what Plaintiffs or any one Class member has at stake; (b) it is desirable to concentrate litigation of the claims herein in this forum; and (c) the proposed Class is manageable. The action will cause an orderly and expeditious administration of Class claims. Economies of time, effort and expense will be fostered.

120. The potential of nearly identical claims makes certification convenient and desirable, particularly for those individuals who might otherwise be left without a viable remedy. Virtually all of the underlying issues in this case are amenable to resolution through the avenue of class action. In the alternative, a failure to certify the Class may result in an enormous number of lawsuits involving

the same core issues, which concern common issues and standardized documents, with the potential for disparate results in cases that are substantially the same. Furthermore, such separate actions would result in the expenditure of unnecessary time and expense, not only by the courts involved and the plaintiffs (many of whom could not afford it), but Allianz as well. In addition, many plaintiffs would be discouraged from pursuing their claims with the prospect of such expenses, and individual plaintiffs would be without sufficient strength to bring Allianz into court at all - a fact known to Allianz.

121. There is nothing to suggest that the alternative (individual lawsuits) would be superior to a class action procedure for deciding and resolving the essential issues that are at the heart of this case. Indeed, it would be more difficult to justify the resolution of those fundamental factual and legal issues in separate lawsuits, with the prospect of diverse and inconsistent rulings and verdicts from multiple courts, and the vast waste of judicial time such multiplicity would require.

122. Class action treatment of this litigation is the only proper and workable solution. The class action would be manageable by focusing on the key issues: (1) the evaluation of the product and the marketing as a whole; (2) evaluating the specific acts or omissions of Allianz by reference to documents, witnesses and expert opinion testimony in a single forum; and (3) applying the legal remedies to the Class as a whole.

123. By the same token, class treatment will provide a vehicle to alert Class members of their rights and avoid typical burdens of individual actions, including the difficulty of finding an attorney to prosecute the matter.

124. When all the recognized factors are considered in determining whether this matter should be certified, none is more compelling than the obvious fact that to deny certification would effectively deny the opportunity to be heard to many individuals and would at the same time potentially create at best an unmanageable and protracted series of individual lawsuits. At worst, it would leave thousands of individuals who need class certification without a practical remedy of any sort. Thus, the denial of class treatment in this case would not only burden the court system, but would also result in the denial of justice to citizens who cannot afford to pursue their individual claims since Allianz has their money and will retain their money unless justice prevails.

### **COUNT I**

#### **CONSUMER FRAUD IN VIOLATION OF MINNESOTA STATUTES, §§ 325F.68-325F.70**

125. Plaintiffs re-allege the allegations in paragraphs 1-124 above as if fully set forth herein.

126. Defendant's acts, practices, misrepresentations and omissions constitute fraud, false pretense, false promise, misrepresentation as well as deceptive sales practices and dissemination of misleading information in violation

of Minnesota Prevention of Consumer Fraud Statutes, Minn. Stat. § 325F.69, subd. 1.

127. Defendant engaged in such acts, practices, misrepresentations and omissions with the intent that Plaintiffs and Class members would rely on such misrepresentations and omissions in connection with the purchase of two-tiered annuities by Plaintiffs and Class members.

128. As a result, Plaintiffs and Class members suffered damages are entitled to restitution and/or actual damages and/or equitable and injunctive relief, costs, reasonable attorney fees pursuant to Minn. Stat. § 8.31, subd. 3a.

## **COUNT II**

### **UNJUST ENRICHMENT**

129. Plaintiffs re-alleges the allegations in paragraphs 1-124 above as if fully set forth herein.

130. As a result of its deceptive scheme to defraud Plaintiffs and Class members, Allianz received billions of dollars of premiums to which it is not entitled and the circumstances described in this Amended Complaint are such that would be unjust for that company to retain the benefit.

131. As a result, Plaintiffs and Class members have been irreparably harmed and are entitled to damages and/or equitable relief as may be determined at trial.

WHEREFORE, Plaintiffs demand judgment against Defendant Allianz Life Insurance Company of North America for themselves and the Class members as follows:

- a. Determining that the action is a proper class action and certifying an appropriate plaintiff Class pursuant to Fed. R. Civ. P. 23;
- b. Granting Plaintiffs and the Class declaratory and other equitable relief including, among other things, rescission and rescissionary damages, as appropriate, to restore Plaintiffs to *status quo ante*;
- c. Awarding all recoverable damages against Allianz in an amount to be determined at trial;
- d. Restitution and/or actual damages and/or equitable and injunctive relief, investigative costs, expert witness expenses, any other cost, and reasonable attorney fees pursuant to Minn. Stat. § 8.31, subd. 3a; and
- e. Granting such other relief as the Court deems just and proper.

## **JURY DEMAND**

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand trial by jury on all issues triable at law.

Dated: March 15, 2006

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