

[Federal Court Denies Class Certification Motion Involving Deferred Annuities](#)

Posted on January 11, 2010 by [Larry Golub](#)

The United States District Court for the Southern District of California denied certification to a purported class of purchasers of deferred annuities. In a decision issued earlier today by United States District Judge Janis Sammartino in [In re National Western Life Insurance Deferred Annuities Litigation](#), Case No. 05-CV-1018-JLS (JSP), the court denied certification as to a nationwide class alleging RICO violations and a California state class alleging multiple statutory violations, including claims under the [Unfair Competition Law](#) (California Business & Professions Code sections 17200 et seq.).

Plaintiffs claimed that National Western “orchestrated a nationwide scheme to target senior citizens and lure them into purchasing its high cost and illiquid deferred annuities,” basing their claim on three alleged misrepresentations and/or omissions – the failure to disclose the high commissions paid to agents, the presence of an illusory bonus on premiums paid, and the use of an increasing asset fee, each of which impacted the interest credited on the annuities. Focusing solely on the commonality and typicality requirements to establish a viable class, the court found that such requirements were lacking. For example, the court emphasized that none of the class representatives possessed an annuity with an asset fee that was increased. Moreover, the court found plaintiffs had not met their burden in demonstrating that all of National Western’s more than twenty annuity products contained the alleged same misrepresentations and omitted the same information. While the court did observe that National Western used standardized forms, they were not identical, and the evidence presented by plaintiffs failed to support their contention that those materials contained the same alleged misrepresentations and omissions.

The court denied the motion for class certification without prejudice and also explained that its ruling did not address any of the numerous other arguments advanced by the parties.

Larry Golub and Kent Keller of Barger & Wolen were co-counsel for National Western Life Insurance Company.