

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

COORDINATED PROCEEDINGS:

AMERICAN INVESTORS CASES II

CHALYS M. STEPHENS and JOHN P. STEPHENS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY, ESTATE PLANNING & INVESTMENTS, INC., *et al.*,

Defendants.

Case No.: JCCP 4441

NOTICE OF PENDENCY OF CLASS ACTION

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TO: ALL PERSONS WHO WERE CALIFORNIA RESIDENTS, AND AGE 65 OR OLDER, AT THE TIME THEY PURCHASED AMERICAN EQUITY DEFERRED ANNUITIES ON THE FOLLOWING FORMS, AND WHO PURCHASED SUCH AN ANNUITY ON OR BEFORE OCTOBER 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), SUPER-7, INDEX-17, INDEX-18, INDEX-24, INDEX-28.

PLEASE READ THIS ENTIRE NOTICE CAREFULLY – YOUR RIGHTS MAY BE AFFECTED BY A LAWSUIT NOW PENDING IN THIS COURT

YOU ARE NOT BEING SUED

This is an important legal notice provided to you by order of the Superior Court of California. This Notice is sent to inform you: (1) that this action is pending before the Honorable Richard A. Kramer, Judge of the Superior Court for the County of San Francisco; (2) that the Court has determined that this action may proceed as a class action; (3) how this action may affect your legal rights; and (4) the steps you may take in relation to the action.

Why Should I Read This Notice?

You may be a member of the class in this action. You should read this notice because, if you are a class member, this action will affect your legal rights. If you do nothing you will remain a class member in this action. If you wish to exclude yourself from this action, this notice contains instructions for doing so.

THE COURT HAS NOT MADE ANY DECISION AS TO THE MERITS OF ANY CLAIMS OR DEFENSES OF EITHER SIDE IN THE ACTION. The sole purpose of this notice is to inform you of the fact that this lawsuit is pending as a class action, so that you may make an informed decision as to what steps you may wish to take in relation to this action.

Definition of the Class and Subclass

The class consists of California senior citizens who purchased certain deferred annuity contracts issued by American Equity Investment Life Insurance Company (referred to as "American Equity"). The Class includes a subclass of those persons who purchased such deferred annuities from Robin Noe, Estate Planning & Investments, Inc., EPICO Insurance Agency, Inc., or their agents.

The "Class" is defined as:

All persons who were California residents, and age 65 or older, at the time they purchased American Equity deferred annuities on the following forms, and who purchased such an annuity on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), Super-7, Index-17, Index-18, Index-24, Index-28.

If you fall within this definition, you are a member of the Class and your rights may be affected by this lawsuit, even if you are not a member of the Subclass, (defined below).

The "Subclass" is defined as:

All persons who were California residents, and age 65 or older, at the time they purchased American Equity deferred annuities on the following forms, and who purchased such an annuity through Robin Noe, Estate Planning & Investments, Inc., EPICO Insurance Agency, Inc. or their agents, on or before October 14, 2008: FPDA-2, FPDA-3, FPDA-7, FPDA-7 (2.25), Super-7, Index-17, Index-18, Index-24, Index-28.

Not every member of the Class is a member of the Subclass; however, every member of the Subclass is also a member of the Class. Excluded from the Class and Subclass are the Defendants in this action, and their officers and employees.

Deceased or Incompetent Class Members

In some cases, a Class member may be deceased, or no longer in control of their own financial affairs. For such a Class member, this action still will affect important legal rights. The Class member's authorized legal representative (e.g., power of attorney, executor of an estate, personal representative, *etc.*) should carefully read this notice and make the necessary decisions about what steps to take in relation to this action.

Summary of the Lawsuit

This lawsuit was brought by plaintiffs, Chalys M. Stephens and John P. Stephens ("Stephens Plaintiffs"), against defendants, American Equity, Robin Noe, Estate Planning & Investments, Inc., EPICO Insurance Agency, Inc., and other defendants. In their Third Amended Complaint, the Stephens Plaintiffs asserted causes of action against American Equity, on their own behalf, and on behalf of the Class for violation of the Unfair Competition Law (California Business & Professions Code §17200, *et seq.*) and fraud.

As discussed below, American Equity strongly denies any wrongdoing or liability, and maintains its annuities and its sale of such annuities fully comply with California law.

A. The Stephens Plaintiffs' Allegations and Damage Claims on Behalf of the Class

On behalf of the Class, among other things, the Stephens Plaintiffs allege American Equity failed to disclose to purchasers that the yields credited over the term of these annuities would be lowered to recoup high commissions paid to its sales agents and any promised premium "bonus" or first year "additional interest." The Stephens Plaintiffs also allege that American Equity failed to comply with statutory surrender charge disclosure requirements under California law. American Equity strongly disputes these allegations and denies any wrongdoing.

The Stephens Plaintiffs seek recovery from American Equity of the surrender charges and reduced yields applied under the subject annuities, plus legal interest on such amounts, punitive and treble damages, and legal fees and costs. The lawsuit also seeks an injunction, (a Court order), limiting or precluding American Equity's above-described practices. The lawsuit does not seek to recover damages for emotional distress, pain and suffering, or consequential damages unique to each Class member.

B. Plaintiffs' Additional Allegations and Damage Claims on Behalf of the Subclass

In addition to the claims asserted on behalf of the Class as a whole, on behalf of the Subclass only, the Stephens Plaintiffs contend that Robin Noe, Estate Planning & Investments, Inc. ("EPI"), EPICO Insurance Agency, Inc. ("EPICO") and their agents created, implemented, and operated a fraudulent and misleading scheme to market and sell the subject American Equity annuities, by misleading and deceiving senior citizens. This alleged marketing scheme included the creation and operation of a "living trust mill", offering and selling estate planning services to seniors as a pretext to an American Equity annuity sale. The Stephens Plaintiffs allege that American Equity had knowledge of, authorized, participated in, and ratified this marketing scheme perpetrated by its appointed agents. American Equity strongly disputes these allegations and denies any wrongdoing.

On behalf of the Subclass, the Stephens Plaintiffs seek recovery from American Equity, Noe, EPI, and EPICO of the surrender charges and reduced yields applied under the subject annuities, plus legal interest on such amounts, punitive and treble damages, and legal fees and costs. The lawsuit also seeks an injunction, (a Court order) limiting or precluding the above-described alleged practices on the part of American Equity, Noe, EPI, and EPICO. This lawsuit does not seek to recover damages for emotional distress, pain and suffering, or consequential damages unique to each Subclass member.

C. Limitation of the Class and Subclass Claims

The Stephens Plaintiffs pursue only those claims and seeks only the relief specifically described in this "Summary of the Lawsuit" section. As a result of prior rulings by the Court, no contract-based claims (e.g., breach of contract, breach of the implied covenant of good faith and fair dealing) are being pursued on behalf of the Class and Subclass. Some Class and Subclass members might have individual damage claims that are not being pursued by the Stephens Plaintiffs, including claims for emotional distress, pain and suffering, or other consequential damages unique to each individual. The Stephens Plaintiffs do not pursue any claims or seek any relief with respect to annuities purchased by any Class member after October 14, 2008.

This class action also does not pursue any claim that any Subclass member's living trust (or other estate planning services) sold by Noe, EPI, EPICO, or their agents, was inadequate, invalid, or improperly or illegally marketed or prepared. The action does not seek to recover any monies paid to Noe, EPI, EPICO, or their agents for living trusts or other estate planning services.

A final judgment in this case could limit or preclude your ability to pursue related claims not pursued in this class action, such as the claims described in the preceding paragraphs. If you wish to pursue damages or claims other than those specifically described in this Notice, you should consider excluding yourself from this class action. Directions for excluding yourself from the Class appear below, under the “Class Members’ Rights” section.

D. Defendants’ Denial of Plaintiffs’ Allegations

The Court has not made any decision as to the merits of any claims or defenses of either side in this action. American Equity, Noe, EPI, and EPICO strongly deny the allegations in the action and deny any liability to any of the plaintiffs or the Class or Subclass members. Defendants have each asserted numerous legal defenses to this lawsuit.

American Equity maintains it fully complied with California law with respect to its annuity sales. American Equity contends the subject annuities include all notices required by California law concerning surrender charge periods and related charges that might be incurred for early termination of the annuities. In addition to this written notice, American Equity maintains it fully disclosed to all annuity purchasers the surrender periods and associated surrender charges that might be incurred upon early termination of the annuities.

American Equity also contends that the Stephens Plaintiffs and all annuity purchasers have received all benefits guaranteed by the annuity contracts, including, but not limited to, first year bonuses and additional interest. American Equity also maintains that all annuity yields were fairly and properly credited, and that at all times American Equity fully complied with the express terms of the annuities. American Equity further contends that all claims asserted on behalf of the certified class in this class action with respect to annuities purchased before November 12, 2000 are barred by the applicable statutes of limitations. Defendants also contend that all members of the Settlement Class who did not validly request exclusion in the matter, *Panter v. Tackett, et al.*, Case Number 01-C1-02109, Jefferson County Circuit Court, Louisville, Kentucky, are excluded from the class in this action. Plaintiffs dispute these contentions. The Court has not made any ruling with respect to either of these contentions.

American Equity strongly denies the Stephens Plaintiffs’ allegations that American Equity authorized, participated in, or ratified the alleged marketing scheme the Stephens Plaintiffs claim was engaged in by Robin Noe, EPI and EPICO. Defendants further contend that they did not engage in any unlawful, fraudulent or wrongful conduct in the marketing or sale of these annuities.

Accordingly, Defendants contend that the plaintiffs and the Class and Subclass members were not injured and are not entitled to any form of damages, restitution, declaratory, or injunctive relief.

Status of the Lawsuit

This lawsuit was originally filed on November 12, 2004, in the Superior Court of California for the County of San Luis Obispo, Case No. CV 040965, *Stephens, et al., etc. v. American Equity Investment Life Insurance Company, Estate Planning & Investments, Inc., et al.* Subsequently, the case was reassigned to the Superior Court of California for the County of San Francisco, as Judicial Council Coordination Proceeding 4441, entitled *American Investors Cases II*, for pre-trial proceedings.

On October 14, 2008, the Honorable Richard A. Kramer, Judge of the Superior Court of California for the County of San Francisco, certified this lawsuit as a class action that may be prosecuted by plaintiffs, Chalys M. Stephens and John P. Stephens, on behalf of the Class as against defendant, American Equity, and on behalf of the Subclass as against defendants, American Equity, Noe, EPI, and EPICO. The Court has also appointed the law firms of Gianelli & Morris and Ernst & Mattison as class counsel.

THE COURT HAS NOT DETERMINED OR MADE ANY RULING WITH RESPECT TO THE MERITS OF THE VARIOUS CLAIMS AND DEFENSES ASSERTED. The fact that the Court certified this lawsuit as a class action does not mean that the Class or Subclass members will obtain any money or recovery, because that is still a disputed and undecided issue. There has been no trial on any claims or defenses. Instead, the Court's ruling means that the final outcome of the action – whether favorable to the Class and Subclass or not – will be binding on every Class and Subclass member.

Class Members' Rights

A. Right to Remain a Class Member: If you wish to remain a Class/Subclass member, you do not have to take any action at this time. You will be bound by any judgment, decision, or final disposition rendered in this lawsuit, whether it is favorable or unfavorable to plaintiffs and the Class or Subclass. You will **NOT**, however, have any obligation to pay attorneys' fees or costs of the lawsuit, under any circumstances.

The monetary and non-monetary relief sought in this lawsuit on behalf of the Class and Subclass members is described fully above. See, Summary of the Lawsuit, A.-B, *above*. If you chose to remain a member of the Class/Subclass, the plaintiffs will pursue those remedies on your behalf.

Some Class members, however, may have individual damage claims that are not being pursued in this lawsuit. This lawsuit does not seek to recover damages for emotional distress, pain and suffering, or consequential damages unique to each Subclass member. If you wish to pursue damages or claims other than those described in this notice, you can exclude yourself from the Class and Subclass by following the directions below.

B. Right to Request Exclusion from the Class: If you do not wish to remain a Class/Subclass member, you may request that the Court exclude you from the Class and Subclass. Subclass members who exclude themselves from the Class will also exclude themselves from the Subclass.

Persons who exclude themselves from the Class/Subclass will not be entitled to share in any money or other benefits under any settlement or judgment favorable to the plaintiffs and the Class or Subclass and will not be bound by any judgment. If you do not exclude yourself from the Class/Subclass by the deadline, below, you will remain a Class/Subclass member and you will be bound by any result reached in the class action, whether favorable or unfavorable.

A request for exclusion must be made in writing, mailed to the Administrator at:

Stephens v. American Equity Class Action
c/o Gilardi & Co. LLC
P.O. Box 6002
Larkspur, CA 94977-6002

The request for exclusion must be postmarked on or before January 2, 2009.

The request for exclusion **MUST** include your name and address, and state: “I request exclusion from the Class in the Stephens Class Action.” The Administrator will provide notice to the Court of all requests for exclusion.

C. Right to Appear Individually or Through Your Own Attorney: If you do not request exclusion, you may, if you wish, enter an appearance through an attorney of your own choosing (at your own expense) or on your own behalf.

If you do not enter an appearance on your own behalf or through counsel, your interests in this class action will be represented by the Court-appointed class representatives, plaintiffs, Chalys M. Stephens and John P. Stephens, through Court-appointed class counsel:

Robert S. Gianelli, Esq.
Gianelli & Morris
626 Wilshire Boulevard, Suite 800
Los Angeles, CA, 90017
Tel. 213-489-1600
Fax 213-489-1611

Raymond E. Mattison
Ernst and Mattison
1020 Palm Street
San Luis Obispo, CA 93401
Tel. 805-541-0300
Fax 805-541-5168

You will **NOT** have any obligation to pay attorneys' fees or costs of the lawsuit to class counsel or the class representatives under any circumstances.

For Further Information

Make sure you read this notice in its entirety, because it affects the important legal rights of the members of the Class and Subclass. If you still have questions about this notice or this lawsuit, you may contact the Administrator toll free at 1-866-780-1742, by electronic mail at classact@gilardi.com, or view information related to the action at www.gilardi.com/americanequity.

You may also review all of the public records of the case at the Public Viewing Room for the Civil Division, Superior Court of California for the County of San Francisco, 400 McAllister Street (between Polk and Van Ness), San Francisco, California 94102, Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. The Customer Service Desk at the Public Viewing Room is open during these same hours to assist you.

Dated: November 21, 2008

Honorable Richard A. Kramer
Judge of the Superior Court