

A Tale of Two Annuities: Exchange of Variable for Fixed Annuity Integral in SLUSA Dismissal

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After attending an annuity seminar, Robert and Diane Ruud exchanged their variable annuity for a fixed annuity sold by PHL Variable. According to the Ruuds, seminar provider John Friendshuh represented the fixed annuity as superior but did not disclose his commission, causing plaintiffs financial loss due to reduction in annuity value and fee payments. The Ruuds brought a putative class action against Friendshuh and PHL for consumer fraud and deceptive trade practices under Minnesota law, consisting of all senior citizens who exchanged an annuity for a PHL annuity through Friendshuh or other PHL agents. Defendants asserted that the state law claims were prevented by the Securities Litigation Uniform Standards Act (SLUSA), which disallows class actions alleging a misrepresentation or omission of material facts under state law "in connection with the purchase or sale of a covered security." Plaintiffs countered that the transaction was not made "in connection with... [a] covered security" because only the surrendered, variable annuity was so defined under SLUSA. The court sided with the defendants, observing that the exchange at issue was not a single, unilateral purchase, but both a purchase and a sale. The court viewed the surrender of the variable annuity as integral to the transaction, noting that many of plaintiffs' alleged misrepresentations were tied directly to the surrender. Since the surrender of a variable annuity was made "in connection with" the sale of a covered security, SLUSA preempted the class claims. Read broadly, this case suggests that, where an "exchange" is alleged, SLUSA is likely to impact a significant proportion of classes alleging misrepresentations under state law, since at least some of the class transactions will have involved the surrender of a covered security.

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