

# The Golden State Annuity Burglar: A Neasham Remix

September 16, 2014

Alan Lewis, a former California insurance agent who faced criminal charges for annuity "twisting," was released from jail after a Superior Court judge dismissed charges for embezzlement, grand theft, and burglary. The story may sound familiar. As reported in previous *Expect Focus* issues, *People v. Neasham* involved the conviction of a California insurance agent for grand theft for the sale of an annuity to an elderly woman. That conviction was subsequently reversed, in part because acceptance of the annuity premium could not constitute theft where the premium was given in exchange for an annuity of equal value, and in part because no evidence suggested that the annuity's surrender provisions somehow reduced its value. The *Lewis* charges stemmed from the same California law that penalizes theft, embezzlement, forgery, or fraud with respect to the property of an elder by any person (not a caretaker) who knows or reasonably should know that the victim is an elder. However, whereas Neasham faced only one felony theft count and 90 days in prison, Lewis originally faced 36 felony counts, mostly for embezzlement, and a potential 40 years in prison based on his dealings with 12 seniors. The prosecution alleged that Lewis committed "twisting" by twice replacing one annuity for another to generate commissions. Lewis allegedly informed the clients that the surrender charges associated with the first replacement would be covered by a bonus from the new annuity. Effectively, the prosecution argued that the amount of the surrender charges was the amount Lewis embezzled from his clients. And, because his actions occurred inside his clients' homes, they claimed he also committed burglary. **The prosecutorial theory is startling because, as in *Neasham*, it sought to criminalize surrender charges, a vital component of complex insurance products that are both approved and supervised by the states.** It also exposes the prosecutor's lack of insurance knowledge because it fails to recognize that insurance agents are compensated for the sale of annuities by insurance companies, not clients. Fortunately for the industry, the *Lewis* case never made it to trial. The judge dismissed the charges after Lewis spent more than four months in jail.

educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.