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Overview

For over 16 years, Todd Fuller has represented life insurance and other financial services companies in class actions and other complex federal and state court litigation and regulatory proceedings throughout the United States.

Todd has extensive experience in matters involving the sale of life products, including life insurance, variable annuities and fixed annuities, and their application and use in advanced design concepts such as pension plans, welfare benefit plans, tax shelters, and other wealth accumulation and preservation models. He has defended life insurers in a wide variety of multistate market conduct and sales practices cases, including vanishing premium insurance cases; stranger-originated life insurance cases; revenue sharing/excessive fee litigation associated with 401(k), 403(b), and 457 retirement plans; Section 412(i) and 419 employee benefit plan litigation; cost of insurance litigation; and annuity sales to seniors. These matters typically involve claims for fraud, breach of contract, breach of fiduciary duties, violations of RICO, violations of ERISA, deceptive trade practices, and breaches of various state consumer protection laws.

Todd is co-leader of the firm's Life, Annuity and Retirement Litigation Practice. He is also the vice-chair and editor of the ABA's Health and Disability & Life Insurance Law Committees newsletter. Todd is co-author of the preemption chapter in the *Handbook on ERISA Litigation* published by Wolters Kluwer Law & Business/Aspen Publishers.

Experience

- *Kushnir v. Aviva Life & Annuity Co.*, No. 2:11-cv-07701, 2013 WL 4479196 (E.D. Pa. Aug. 22, 2013) (granting motion to dismiss plaintiffs' fraud-based claims in action against insurer relating to alleged misrepresentations regarding the validity and future tax consequences associated with life insurance policies used to fund plaintiffs' employee benefit plan under Section 412(i) of the Internal Revenue Code).
- *Volvo Fin. Servs., LLC v. Financiera TFC S.A.*, No. 2:12-cv-05609, 2013 WL

3761035 (D.N.J. July 16, 2013).

- *Chau v. Aviva Life & Annuity Co.*, No. 3:09-cv-02305, 2012 WL 6522150 (N.D. Tex. Dec. 14, 2012) (granting motion to dismiss plaintiffs' third amended mass action complaint with prejudice in action relating to the design, sale, and marketing of certain specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Zarella v. Pacific Life Ins. Co.*, 498 F. App'x 945 (11th Cir. 2012) (affirming district court's summary judgment in putative nationwide class action asserting breach of contract and California consumer protection law claims against insurer relating to the validity and future tax consequences associated with certain life insurance policies used to fund plaintiffs' employee benefit plan under Section 412(i) of the Internal Revenue Code).
- *Donaldson v. First Union Nat'l Bank*, 99 So. 3d 951 (Fla. 2d DCA 2012).
- *Paul v. Aviva Life & Annuity Co.*, 487 F. App'x 924 (5th Cir. 2012) (affirming district court's dismissal with prejudice of putative nationwide class action asserting RICO and common-law fraud claims based on the design, sale, and marketing of life insurance policies used to fund employee benefit plans under Sections 419A(f)(6) and 419(e) of the Internal Revenue Code).
- *Drilling Consultants, Inc. v. First Montauk Sec. Corp.*, No. 8:10-cv-02873, 2012 WL 3522607 (M.D. Fla. Aug. 14, 2012) (granting summary judgment with respect to breach of contract and negligent misrepresentation claims in action against insurer relating to alleged misrepresentations regarding the validity and future tax consequences associated with life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Zarella v. Pacific Life Ins. Co.*, 820 F. Supp. 2d 1371 (S.D. Fla. 2011) (granting summary judgment in putative nationwide class action asserting breach of contract and California consumer protection claims against insurer relating to the validity and future tax consequences associated with certain life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Ricupito v. Indianapolis Life Ins. Co.*, No. 3:09-cv-02389, 2011 WL 3820970 (N.D. Tex. Aug. 30, 2011) (granting summary judgment in action alleging that certain life insurance contracts designed for use in Section 412(i) and 419 benefit plans guaranteed the validity or tax consequences of plaintiffs' employee benefit plans).
- *Bhatia v. Indianapolis Life Ins. Co.*, No. 3:09-cv-01086, 2011 WL 3820825 (N.D. Tex. Aug. 29, 2011) (granting motion for judgment on the pleadings in action asserting fraud-based claims against insurer relating to marketing and sale of life insurance policies to fund Section 412(i) plan).
- *Zarella v. Pacific Life Ins. Co.*, 809 F. Supp. 2d 1357 (S.D. Fla. 2011) (*Zarella III*) (granting motion to dismiss second amended putative nationwide class action asserting fraud-based claims against insurer relating to alleged misrepresentations and omissions regarding the validity and future tax consequences of certain life insurance policies used in plaintiffs' Section 412(i) benefit plan).
- *Chau v. Aviva Life & Annuity Co.*, No. 3:09-cv-02305, 2011 WL 3156702 (N.D. Tex. July 25, 2011) (*Chau II*) (dismissing with prejudice mass action asserting claims relating to the design, sale, and marketing of certain specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Paul v. Aviva Life & Annuity Co.*, No. 3:09-cv-01490, 2011 WL 2713649 (N.D. Tex. July 12, 2011) (*Paul II*) (dismissing with prejudice putative nationwide class action asserting RICO and common-law fraud claims based on the design, sale,

and marketing of life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).

- *Drilling Consultants, Inc. v. Pacific Life Ins. Co.*, 806 F. Supp. 2d 1228 (M.D. Fla. 2011) (granting motion to dismiss claims for breach of contract, breach of fiduciary duty, and violations of California consumer protection laws in action relating to the design, sale, and marketing of specially designed life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Chau v. Aviva Life & Annuity Co.*, No. 3:09-cv-02305, 2011 WL 1990446 (N.D. Tex. May 20, 2011) (*Chau I*) (granting motion to dismiss mass action asserting claims relating to the design, sale, and marketing of specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Zarella v. Pacific Life Ins. Co.*, 755 F. Supp. 2d 1231 (S.D. Fla. 2011) (*Zarella I*) (dismissing amended putative nationwide class action asserting fraud-based claims against insurer relating to alleged misrepresentations and omissions regarding the validity and future tax consequences of certain life insurance policies used in plaintiffs' Section 412(i) benefit plan).
- *Paul v. Aviva Life & Annuity Co.*, No. 3:09-cv-01490, 2010 WL 5105925 (N.D. Tex. Dec. 14, 2010) (*Paul I*) (granting motion to dismiss putative nationwide class action asserting RICO and fraud-based claims relating to the design, sale, and marketing of specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Zarella v. Pacific Life Ins. Co.*, 755 F. Supp. 2d 1218 (S.D. Fla. 2010) (*Zarella I*) (granting motion to dismiss putative nationwide class action asserting fraud-based claims against insurer relating to alleged misrepresentations and omissions regarding the validity and future tax consequences of certain life insurance policies used in plaintiffs' Section 412(i) benefit plan).
- *Montoya v. N.Y. State United Teachers, ING Life Ins. & Annuity Co.*, 754 F. Supp. 2d 466 (E.D.N.Y. 2010) (granting motion to dismiss putative class action relating to alleged breaches of fiduciary duties based on revenue sharing payments, alleged excess fees, and the endorsement of certain tax deferred annuities in employer's Section 403(b) retirement plan).
- *Montoya v. ING Life Ins. & Annuity Co.*, 653 F. Supp. 2d 344 (S.D.N.Y. 2009) (granting motion to dismiss putative class action relating to alleged breaches of fiduciary duties with respect to the endorsement of certain tax deferred annuities offered through an employer's Section 403(b) retirement plan).
- *Berry v. Indianapolis Life Ins. Co.*, 638 F. Supp. 2d 732 (N.D. Tex. 2009) (*Berry I*) (granting dismissal with prejudice of putative nationwide class action relating to the design, sale, marketing, and administration of specially designed insurance policies used to fund tax-advantaged defined benefit pension plans under Section 412(i) of the Internal Revenue Code).
- *Hildebrandt v. Indianapolis Life Ins. Co.* (N.D. Tex.) (successful defense of putative nationwide class action asserting claims relating to the design, sale, and marketing of life insurance policies used to fund employee benefit plans under Section 412(i) of the Internal Revenue Code).
- *Berry v. Indianapolis Life Ins. Co.*, 600 F. Supp. 2d 805 (N.D. Tex. 2009) (*Berry I*) (granting motion to dismiss putative nationwide class action asserting claims against insurers and insurance consultants relating to the design, sale, marketing, and administration of specially designed insurance policies used to fund defined benefit pension plans under Section 412(i) of the Internal Revenue Code, and marketed as a proposed tax shelter. The essence of the complaint

was that the insurers and consultants committed fraud by opining in the early 2000s that the Section 412(i) plans and insurance policies would be valid and provide favorable future tax advantages, and failed to disclose the possibility that the IRS would issue guidance suggesting that the plan's contemplated tax advantages were invalid).

- *In re Indianapolis Life Ins. Co. I.R.S. § 412(i) and § 419 Plans Life Ins. Mktg. Litig.*, 581 F. Supp. 2d 1364 (J.P.M.L. 2008) (successfully established an MDL proceeding for claims relating to the design, sale, and marketing of life insurance policies used to fund employee benefit plans under Sections 412(i) and 419 of the Internal Revenue Code)
- *Libby v. Am. Bankers Sales Corp.*, 932 N.E.2d 1222 (Ill. App. Ct. 2007).
- *S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004).

All Insights

10.04.2019	Court Sheds Light on ERISA's Fiduciary Exception to Attorney-Client Privilege
10.04.2019	Defendants Fend Off Challenge to FIA's Proprietary Index
10.04.2019	Multiple Plaintiffs Take Shot at SEC Regulation Best Interest
04.04.2019	Circuit Court Rules Insurance Agents Are Not "Employees" Under ERISA
12.18.2018	Class Certification Denied in Suitability Class Action
03.31.2018	Plaintiffs' Notice That the 'Taxman Cometh' Was Sufficient to Trigger Statute of Limitations
11.14.2012	Recent Decisions in § 419 and § 412(i) Litigation
11.15.2011	Recent Decisions in § 412(i) and § 419 Litigation
02.15.2010	Class Notification Costs
11.15.2009	Dismissal of Putative 412(i) Class Reaffirmed
11.15.2009	ERISA Class Dismissed for Lack of Subject Matter Jurisdiction
11.15.2009	Panel Expands Scope of MDL No. 1983
11.15.2009	Preemptive Motion to Deny Class Certification Approved
05.15.2009	Class Certification Denial Doesn't Divest Court of CAFA

- 02.15.2009 Court Dismisses Putative 412(i) Class Action

- 02.15.2009 Fourth Circuit Stymies CAFA Removal

- 08.15.2008 Annuity Issues in 2008

- 05.15.2008 Fear of Injury Claim Insufficient

- 04.03.2008 Survey of Retirement Plan Litigation and "Revenue Sharing" Class Actions

- 09.15.2007 Unsolicited Faxes Generate Class Action

- 05.15.2007 Class Settlements Closely Scrutinized

- 01.15.2007 Rule 68 Offer Doesn't Derail Class Action

Professional & Community Involvement

- American Bar Association
 - Tort Trial and Insurance Practice Section
 - Vice-Chair, Life Insurance Law Committee
- Dade County Bar Association
- Defense Research Institute
- Miami-Dade County Public Schools
 - Dade Partners Program

Speaking Engagements

- "Class Action Litigation Update," Client Focus Forum, Denver (October 2015).
- "2015 Carlton Fields Class Action Survey," Client Focus Forum, Newport Beach, CA (October 2015).

Credentials

EDUCATION

- University of Miami School of Law (J.D., *magna cum laude*, 2003)
- West Virginia University (B.S./B.A., 1998)

COURT ADMISSIONS

- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, Middle District of Florida

BAR ADMISSIONS

- District of Columbia
- Florida

- U.S. District Court, Southern District of Florida

Areas of Focus

PRACTICES

- Appellate & Trial Support
- Class Actions
- ERISA Employee Benefit Plan Litigation
- Financial Elder Abuse
- Life, Annuity, and Retirement Litigation
- Life, Annuity, and Retirement Solutions
- Litigation and Trials
- Property & Casualty Insurance