

## [Tabares et al v. Equitrust Life Ins. Co.](#)

Year: 2015

Court: California Court of Appeal, Second District, Division Seven

Case Number: B254409

Indexed annuities are life insurance products that promise high yields for consumers. However, some of these products are sold with “premium bonuses” that in actuality tax the return of the product over time resulting in little or no net gain. Agents and brokers are paid high commissions for selling these products and almost by design are encouraged to mislead particularly vulnerable consumers (seniors) as a sales tactic. The problems with indexed annuities are widely documented. Policymakers in California have expressed a preference for regulating these products, but courts must step in where regulatory oversight falls short. The types of annuities at issue in this case are likely violative of California law, namely the unfair competition law and provisions of the insurance code. Such a case cannot be decided on summary judgment and thus UP argued in its brief it was improper for the trial court to dismiss the case and refuse to certify the class action. UPdate 9/28/15: Unfortunately the Court of Appeal upheld the the insurer’s motion for summary adjudication (granted by the trial court). Counsel for plaintiffs in the case described the decision this way: “In *Tabares v. EquiTrust Life Insurance Company*, a class of deferred annuity purchasers alleged that although EquiTrust promised them a 10% premium bonus if they purchased one of its deferred annuities, it simply offset the amount of the bonus through lower annual rates. The class of purchasers, many of whom are senior citizens, also alleged that EquiTrust failed to comply with California’s surrender penalty warning law for senior citizens (Ins. Code section 101271.3) because it failed to properly disclose the consequence of the annuities’ “Market Value Adjustment” provision that boosted surrender penalties when interest rise. The Court of Appeal determined that purchasers who believed the promise of a bonus simply demonstrated a “lack of sophistication” and their “vulnerability to misleading sales tactics” and had no breach of contract claim. The court also determined that although EquiTrust violated the senior citizen warning law for surrender penalties, those seniors could not show “reliance” on the absence of a warning to state a claim under the unlawful prong of California’s Unfair Competition Law.” The decision is attached below.



UP's brief was authored by Executive Director Amy Bach, Esq. and Staff Attorney Dan Wade, Esq.

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