This is a class action lawsuit brought by Plaintiff The Parton Revocable Family Trust, dtd 10/20/1997, individually and on behalf of all similarly situated purchasers of variable annuity insurance contracts bought through Defendant Linsco/Private Ledger, Inc., between January 1, 1990, and January 26, 2005, inclusive, (the "Class Period"), seeking to pursue remedies, *inter alia*, under the Securities Exchange Act of 1934 (the "Exchange Act"). Plaintiff alleges upon personal knowledge as to itself and its own acts, and on information and belief as to all other matters which allegations are likely to have evidentiary support after further investigation and discovery, as follows:

This is a class action lawsuit brought by Plaintiff The Parton Revocable Family Trust, dtd 10/20/1997, individually and on behalf of all similarly situated purchasers of variable annuity insurance contracts bought through Defendant Linsco/Private Ledger, Inc., between January 1, 1990, and January 26, 2005, inclusive, (the "Class Period"), seeking to pursue remedies, *inter alia*, under the Securities Exchange Act of 1934 (the "Exchange Act"). Plaintiff alleges upon personal knowledge as to itself and its own acts, and on information and belief as to all other matters which allegations are likely to have evidentiary support after further investigation and discovery, as follows:
INTRODUCTION

1. This action challenges Defendant Lincso Private Ledger's (hereafter "Defendant" or "LPL" or the "Company") common course of conduct to market, sell and administer variable annuity insurance contracts ("Annuity Contracts") to its stock brokerage customers without informing them that it maintains an undisclosed revenue sharing interest in the transaction; and that the Annuity Contracts offered are limited to products offered by insurers that have surreptitiously agreed to provide Defendant compensation in connection with the sale(s) of Annuity Contracts additional to that disclosed in the annuity's underlying prospectus and other LPL sales and marketing materials.

2. A variable annuity is an insurance contract which is recognized as being an "investment contract" under Section 2 of the Securities Act of 1933. Annuity Contracts generally provide that the purchaser agree to pay a single "lump sum" premium, or scheduled fixed premiums (or a combination thereof) for a pre-set number of years which are deposited into a separate sub-account after deduction of expenses, fees and charges as specified in the contract. These separate sub-accounts must be registered with the Security Exchange Commission pursuant to the Investment Company Act of 1940. Unlike traditional insurance products, the premiums collected and deposited in the annuitant's separate account are available for tax deferred investment in one or more investment portfolios called sub-accounts. The portfolios typically consist of mutual funds which in turn hold common stocks, bonds and other equities designed to produce capital gains as well as a return of interest, and the annuity also commonly provides for a death benefit. Upon maturity of the annuity (usually a date fixed by the terms of the contract), the annuitant receives payments from the annuity's accumulated value in such amounts and upon such terms as specified in the contract. Variable annuities place all the investment risk on the annuitant and none on the insurance company that underwrites and issues the annuity contract.

3. LPL Financial Services ("LPL") is an independent brokerage firm with more than 5,500 financial advisors, based in more than 3,300 branch offices nationwide that provides capital markets services, investment banking and advisory services, wealth management, asset...
management, insurance, banking and related products and services. In addition to being a securities broker, LPL also provides its customers with professional financial and investment advisory services concerning, among other things, variable annuity insurance contracts and variable insurance products. LPL's customers include investors looking to procure, among other things, variable annuities contracts and LPL purportedly represents and acts on behalf of and in the best interest of its clients in purchasing such annuities. In the capacity of purchasing alternative variable Annuity Contracts, LPL owes its clients the utmost duty of candor and full disclosure, including the duty to disclose all sources and amounts of income received from any transactions involving those clients.

4. Rather than providing independent and unbiased brokerage services to its clients on the terms disclosed, LPL maintains secret Undisclosed Payment Agreements with a number of insurance company underwriters of Annuity Contracts inducing LPL to "steer" LPL clients to them under arrangements providing that LPL collects (undisclosed) commissions and fees from the sale of the Annuity Contract(s). This normally occurs by the insurance companies relegating a portion of the premium which is thereafter secretly remitted to LPL. These actions cause the insurance companies to collect higher premiums than would be paid in a truly competitive market and, correspondingly, allow LPL to receive a higher amount of compensation from the annuity transaction than disclosed to the client in the annuity's prospectus and related LPL materials. Defendant has effectuated this improper conduct through written undisclosed contingent fee sharing agreements ("Undisclosed Contingent Fee Sharing Agreements") between LPL and certain insurance companies ("Participating Insurance Companies") whose annuity products are sold to LPL clients.

5. These Undisclosed Fee Sharing Agreements, which have been in effect since at least January 1, 1990, provide additional, undisclosed compensation to LPL based on factors such as the volume of Annuity Contracts LPL places with given participating insurance companies, the persistency of the annuity business LPL brings to that company and the profitability of the subject Annuity Contracts to the Participating Insurance Companies (in terms of the contract administrative fees, account loads and other charges that collected). These
Undisclosed Fee Sharing Agreements are akin to a profit-sharing arrangement between LPL and the Participating Insurance Companies. The Undisclosed Fee Sharing Agreements harm LPL's customers by, inter alia, creating a conflict of interest between LPL's financial interest in maximizing income and selling its customers the best investment products in a competitive market. The fee sharing arrangements inflated the cost to the client of the Annuity Contract(s) purchased by Plaintiff.

6. Under its marketing and brokerage scheme, LPL holds itself out to the public as an expert in the analysis and procurement of annuities and that uses its superior judgment to best meet a customer's financial needs. As a broker, LPL has a duty to find for its customers the best variable annuity at the lowest cost. Defendant also has a duty to fully disclose all sources of income from a transaction and all relationships that may create a bias or conflict with its duty to a client. These Undisclosed Fee Sharing Agreements, accordingly, operate to defraud LPL clients in violation of the Securities Exchange Act and the rules promulgated thereunder.

JURISDICTION AND VENUE


8. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and 15 U.S.C. §78aa. Substantial acts in furtherance of the alleged fraud and/or its effects have occurred within this District and Defendant is found here as well.

9. In connection with the acts and omissions alleged in this complaint, Defendant, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

THE PARTIES

10. Plaintiff Parton Revocable Family Trust (hereinafter “Parton Trust”), is a California Revocable Trust created under the laws of the State of California for the benefit of two
retired elderly investors, Donald Parton, age 83 and Ruth A. Parton, age 73. Plaintiff is a client
of LPL which acted in its capacity as a broker and advisor to Plaintiff in the management of
Plaintiff's retirement portfolio. LPL recommended to Plaintiff and carried out the purchase of a
variable Annuity Contract using funds entrusted to LPL by Plaintiff. Plaintiff purchased and paid
the premiums for the variable Annuity Contract and was damaged by Defendant's conduct as
alleged herein.

11 Defendant Linsco/Private Ledger Corp., is a California Corporation with
headquarters in Boston, Massachusetts, and San Diego, California. It is a broker-dealer
registered with the National Association of Securities Dealers ("NASD"), CRD #6413 and the
Securities and Exchange Commission (SEC) pursuant to the Securities Exchange Act of 1934
and an investment advisor registered with the Securities and Exchange Commission pursuant to
the Investment Advisors Act of 1940. Linsco/Private Ledger Corporation is a wholly owned
subsidiary of LPL Holdings, Inc., a Massachusetts holding corporation.

FACTUAL ALLEGATIONS

13. LPL is a broker holding itself out to the public as providing, and does in fact
provide, brokerage services for various types of clients, including corporations, public entities,
professional services organizations and private clients. LPL's brokering services include assisting
its clients in the procurement of variable annuity insurance products as part of their LPL
portfolios.

14. LPL purports to allow its customers access to a broad array of insurance
companies underwriting annuity products so that LPL's customers can obtain the product best
suited for their business and personal needs at the lowest reasonable cost. LPL holds itself out as
providing objective and unbiased advice to customers based on their investment needs. LPL's
recommendations are purportedly based on an independent assessment of the best and
most appropriate insurance for customers.

15. LPL represents that it is a highly-skilled securities broker exercising great acumen
and possessing the special knowledge and expertise necessary to understand and evaluate the
complex and sophisticated world of variable annuity insurance products available in the market
and that it has the ability to determine which products best fit the needs of its customers. LPL encourages its customers to rely on this proffered special knowledge and expertise in procuring variable annuities and counsels its customers concerning the complex and specialized insurance they are purchasing. LPL maintains and fosters a confidential relationship with its customers while undertaking the responsibilities of its charge.

16. Through its television, print, website and other promotional materials, LPL represents expertise in managing the assets of the individual investors. Through its website, it promises: "A leading source of unbiased financial guidance” "A leading source for objective advise” "Your needs come first,” LPL's further represents that, "LPL offers no investment products of our own, so LPL representatives can devote their time and energies . . . to understanding your individual financial objectives,” an affirmative statement that is not only deceptive but contradicted by its self-interested dealings as described herein.

17. LPL makes these public representations while failing to disclose that it has an arrangement compromising its independence as provided by its Undisclosed Fee Sharing Agreements, from which it reaps substantial revenue. Rather than providing its customers objective, expert advice in determining which insurance product best fits their insurance needs, LPL steers its customers to purchase the policies sold by the Participating Insurance Companies with which it has Undisclosed Fee Sharing Agreements. Rather than prioritizing the interests of its customers - as it is required to do - LPL allows its own interests to first be maximized by the illegal compensation it receives under the Undisclosed Fee Sharing Agreements with Participating Insurance Companies. These Undisclosed Fee Sharing Agreements provide a disincentive to LPL employees from properly performing their duties to provide unbiased brokerage and other financial services.

18. The Undisclosed Fee Sharing Agreements provide LPL with undisclosed compensation including kickbacks and override commissions generated by the premiums from the sale of the Annuity Contracts based on the volume of insurance LPL places with a given insurance company, the persistency of the renewal business LPL brings to that company and the profitability of the subject policies. These Undisclosed Fee Sharing Agreements further provide
that LPL's sales of Annuity Contracts are limited to those products offered by the Participating Insurance Companies. Based on information and belief, the Participating Insurance Companies include, *inter alia*, American Skandia, Prudential Financial, Lincoln Life, The Hartford, John Hancock, Manulife, Nationwide, and AIG.

19. Plaintiff, Parton Trust, sought financial advice from a duly authorized and licensed LPL agent in connection with investments from its investment account maintained with LPL. The Parton Trust, through Ms. Parton, relied upon the representations of LPL that LPL would provide knowledgeable and professional advice regarding her financial services needs. LPL never informed Ms. Parton, or the Parton Trust, that the annuity products offered were limited to products offered by the Participating Insurance Companies and that it had entered into an Undisclosed Fee Sharing Agreements providing undisclosed compensation to LPL for the sale of certain Annuity Contracts. On August 9, 2000 LPL sold Plaintiff an American Skandia variable annuity “American Skandia Advisors Plan II,” Annuity No. 000474615, in the amount of approximately $96,042.46.

20. In connection therewith, LPL provided The Parton Trust with a copy of the prospectus and standard form annuity contract. The annuity solicited was called the American Skandia Advisors Plan II variable annuity, underwritten by American Skandia, A Prudential Financial Company and LPL recommended its purchase from funds in The Parton Trust's investment account. At no time during the sales presentations by LPL for the variable annuity did the representations made materially differ from the information contained in the pre-printed, standard form annuity contract and prospectus or LPL's sales materials. Relying on the information from the materials, on or about January 13, 1997, The Parton Trust purchased an Annuity Contract as recommended by LPL. The Annuity Contract and prospectus provide for certain and specific compensation to LPL. However, unknown and undisclosed to Plaintiff, LPL had previously entered into an Undisclosed Fee Sharing Agreements with American Skandia and/or Prudential Financial providing LPL with an override commission from the premiums paid by Plaintiff on the Annuity Contract and, also, receipt of additional undisclosed compensation based on the performance of the annuity above and beyond the compensation schedule disclosed

CLASS ACTION COMPLAINT

-7-
by LPL and American Skandia and/or Prudential Financial. LPL never informed The Parton Trust that it would, or could, profit in addition to that represented to The Parton Trust as provided in the Annuity Contract and prospectus.

21. The Undisclosed Fee Sharing Agreement between LPL and American Skandia and/or Prudential Financial is illustrative of the Undisclosed Fee Sharing Agreements Defendant has entered into with other insurance companies. These Undisclosed Fee Sharing Agreements, sometimes referred to as Special Compensation Agreements, Direct Vendor Marketing Agreements, or Override Agreements, provide undisclosed compensation to LPL, including certain undisclosed fees and costs paid by the insurance companies to LPL, and enable it to conceal from its clients the fact that these Undisclosed Fee Sharing Agreements exist and that LPL receives this additional and undisclosed compensation on the sale of Annuity Contracts. In return, LPL steers clients to purchase annuities underwritten by Participating Insurance Companies with which LPL has entered into Undisclosed Fee Sharing Agreements.

22. As part of its financial advisement services, LPL presents to potential customers written proposals and statements for analyzing and improving their financial security and the long-term yield(s) of their investments. LPL gathers personal and proprietary information about their clients and makes recommendations for the allocation of client assets. For these services, LPL charges clients a fee, along with commission charges for the sale(s) of securities, including the sale of Annuity Contracts. These quarterly fees and the commission charges stated in the client's contract are the only disclosure of compensation to LPL's customers. LPL fails to include a disclosure of the additional compensation paid to LPL for the sale of Annuity Contracts.

23. LPL fails to disclose to LPL's clients that it has Undisclosed Fee Sharing Agreements in place for the Participating Insurance Companies to pay it significant additional compensation. The flat rate fee quoted to the client pales in comparison to the additional undisclosed compensation paid to LPL by the Participating Insurance Companies. This additional compensation includes unlawful kickbacks tied to (a) volume of premiums generated by LPL's sales of the Participating Insurance Companies' products, (b) LPL's ability to assist the Participating Insurance Companies retain their existing business with LPL's clients, i.e.,
24. LPL steers a large portion of its Annuity Contracts business to American Skandia and/or Prudential Financial and other Participating Insurance Companies with which it has entered into Undisclosed Fee Sharing Agreements. LPL has significant influence and control over its relationships with the insurance companies because LPL places hundreds of millions of premium dollars with those companies.

25. Although LPL is aware of its conflict of interest with its clients, through its fraudulent representations, material omissions and failure to disclose, it has knowingly misled and continues to mislead and deceive its customers to believe that: (a) LPL has provided independent, unbiased brokering advice; (b) LPL has directed them to the insurance companies' annuity products after careful and impartial consideration; and (c) that the only fees and costs in the annuity products they purchase are the compensation schedule disclosed by LPL at the outset.

26. LPL has profited enormously from its fraudulent representations, material omissions and failures to disclose, inducing consumers to use LPL's insurance brokering services and to purchase the Participating Insurance Companies' products through a pattern of fraudulent representations, material omissions and active concealment of the Undisclosed Fee Sharing Agreements and the conflicts of interest they cause.

27. This unlawful and unethical conduct is the subject of widening investigation into insurance industry's sales practice abuses and conflicts of interest. An analogous scheme can be found in the mutual fund sales context in which LPL also played a prominent role. This case presents an instance of broker dealer-insurance company syndications involved in the same conduct which is currently the subject of hearings before the United States Senate, as well as multiple Investigations being conducted by New York State Attorney General, Elliot Spitzer; California's Insurance Commissioner, John Garramendi and California's Attorney General, Bill Lockyer. In fact, insurance regulators and criminal prosecutors in almost every State in the Union are in the process of initiating probes into the Insurance Industries Sales and Distribution practices for "steering" sales, receiving "kickbacks" and failing to disclose compensation in the form of contingent bonuses and sales contests.
FRAUDULENT CONCEALMENT

28. Despite exercising reasonable diligence, Plaintiff and Class members could not discover, and were prevented from discovering, Defendant's wrongdoing within one (1) year of the filing of this complaint. The representations made by LPL and the Annuity Contract and related contract materials approved and disseminated by Participating Insurance Companies and LPL to Plaintiff and Class members fail to disclose that LPL had a financial interest in the sale of Annuity Contracts beyond that stated in the contract. Plaintiff and Class members could not have known that Defendant had entered into Undisclosed Fee Sharing Agreements with the Participating Insurance Companies whereby it would receive additional undisclosed compensation as these Undisclosed Fee Sharing Agreements were kept confidential and secreted from Plaintiff and Class members. Nor could Plaintiff and Class members have known that LPL's advise and recommendation of the Annuity Contracts were not based on LPL's consideration of their best interests and in light of all such available products, as LPL represented, but were limited to those Annuity Contracts produced by the Participating Insurance Companies.

CLASS ALLEGATIONS

29. Plaintiff, The Parton Trust, brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3). The Class is defined as all persons and entities who purchased variable annuity insurance contracts from LPL that were subject to an Undisclosed Fee Sharing Agreements with the producing insurance company to provide undisclosed compensation to LPL. Excluded from the Class is Defendant, any entity in which Defendant has controlling interest or are a parent or subsidiary of or is controlled by Defendant, and the officers, directors, broker-agents, affiliates, legal representatives, heirs, predecessors, successors or assigns of Defendants.

30. The Class is so numerous that the individual joinder of all Class Members is impractical under the circumstances of this case. While the exact number of Class Members is unknown to Plaintiff at this time, Plaintiff believes that, at a minimum, there are thousands of Class Members located throughout the United States.
31. Common questions of law and fact exist which apply to all Plaintiff and Class Members, which predominate. These common legal and factual questions include, but are not limited to, the following:

(a) Whether Defendant's practice of collecting undisclosed compensation violates Section 10(b) of the Exchange Act and Rule 10b-5;

(b) Whether Defendant had a duty to disclose to Plaintiff and Class members that it would receive additional, undisclosed compensation on the sale of Annuity Contracts;

(c) Whether Defendant's conduct in connection with the marketing and sale of Annuity Contracts violated the Financial Advisors Act;

(d) Whether Plaintiff and Class Members reasonably and justifiably relied upon the representations of Defendant;

(e) Whether Defendant's conduct constitutes violation of section 206 of the Investment Advisors Act (15 U.S.C. §80-6); and

(f) Whether Defendant's practice of collecting undisclosed compensation should be enjoined.

30. Plaintiff's claims are typical of the claims of Class Members, all of whom have been the subject of Defendants' wrongful conduct as described herein.

32. Plaintiff will fairly and adequately protect the interest of members of the Class. Plaintiff has been injured in the same manner as the Class as a result of Defendants' wrongful conduct as alleged herein. Plaintiff is, therefore, a member of the Class, and united with the Class by a common interest, and is an adequate representative as he has no interests that are adverse to the interests of absent Class Members. Plaintiff shares identical or similar legal rights and has no interests antagonistic to the Class. Plaintiff has retained counsel who are competent and experienced in the prosecution of complex securities class actions. Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the Class. Plaintiff and his counsel will fairly and adequately protect the Class Members' interests.

33. A class action is superior to other available methods for the fair and efficient
adjudication of this litigation since individual litigation of Class Members' claims is impractical. Even if all the members of the Class could afford individual litigation in light of the damages to each individual class member, such litigation would be impracticable and an undue burden upon the courts. It would be unduly burdensome for the courts to adjudicate identical legal and factual issues in thousands of cases. Individual litigation increases delay and expense to all parties, including Defendants, associated with the resolution of the complex legal and factual issues of this case. The prosecution of separate actions by the individual Class Members would create a risk of inconsistent adjudications with respect to individual Class Members, thus establishing incompatible standards of conduct for Defendants. The prosecution of separate actions would create a risk of adjudications that would be dispositive of the interests of the other Class Members who are not parties to such adjudications, thus substantially impairing the ability of such non-party Class Members to protect their interests.

34. A class action is in the best interest of judicial economy. Proof of the wrongs committed against Plaintiff will provide proof of the wrongs committed against all Class Members. Identification of Class Members can be easily determined from records kept in the ordinary course of business by Defendants. This Court can adjudicate all Class Members' claims with respect to the conduct complained of herein.

35. Class action treatment is a superior method of adjudication and provides a substantial benefit to the litigants and the courts since it presents far fewer management difficulties and provides the benefits of a single adjudication and comprehensive supervision by a single judge. Furthermore, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them. An important public interest will be served by addressing the matter as a class action. Notice of the pendency of and any resolution of this class action can be provided to Class Members by direct mail as well as publication.

36. Plaintiff is unaware of any difficulties likely to be encountered in the management of this action that would preclude its maintenance as a class action. Accordingly, the proposed Class fulfills the certification criteria of FRCP, Rule 23(a) and (b)(3) and certification of the
above-defined Class is, therefore, appropriate.

FIRST CAUSE OF ACTION

Violation of Section 10(b) of The Exchange Act and Rule 10b-5

37. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 35, inclusive, as though set forth fully herein.

38. Defendant knew, or was reckless in failing to know, of the omissions of material fact contained in its Annuity Contract and prospectus concerning Defendant's marketing and sale of Annuity Contracts, as set forth above, especially in light of Defendant's representations in its marketing materials that LPL would provide professional unbiased financial advisement services. Specifically, Defendant:

(a) knew or reasonably should have known that Plaintiff and Class members expected and were entitled to receive independent, unbiased financial services including LPL's consideration of variable annuity insurance products not limited by the effect of the Undisclosed Fee Sharing Agreements with the Participating Insurance Companies;

(b) knew that they were not providing unbiased financial advisement services independent of its own interest when selling Annuity Contracts;

(c) knew or reasonably should have known that Plaintiff and members of the Class were not informed of the additional compensation LPL received on the sale of Annuity Contracts indirectly and indirectly, from the Participating Insurance Companies and the inherent conflicts that were created by the Undisclosed Fee Sharing Agreements; and

(d) knew that by omitting the fact above, Defendant received additional, undisclosed compensation.

39. With this knowledge, or with the responsibility for having said knowledge, and with conscious disregard for the harm its conduct would cause, Defendant solicited the sale of Annuity Contracts to Plaintiff and similarly situated Class members and, in fact, sold Annuity Contracts to them notwithstanding the material omissions and misleading statements.

40. Since entering into said Undisclosed Fee Sharing Agreements at least by November of 1989 (effective January 1, 1990), LPL, with knowledge of, or in reckless disregard
of, the truth has disseminated and pursued the sale of Annuity Contracts, referred to above, which were misleading and/or omitted material facts in failing to disclose material information necessary to make the statements made (i.e., "Your goals come first") relative to the circumstances under which they were made not misleading.

41. Since at least January of 1990, Defendant, directly and indirectly, participated in a course of business that operated as a fraud or deceit to purchasers of Annuity Contracts and concealed material information regarding additional undisclosed compensation to LPL received from the Participating Insurance Companies and, also, concealed that LPL would limit its recommendation of Annuity Contracts to product underwritten by the Participating Insurance Companies.

42. Plaintiff and other Class members were deceived and misled by Defendant's representations in conjunction with its recommendation of American Skandia and/or Prudential Financial variable annuity product without adequate disclosure of the above material facts. Plaintiff and Class members were misled and deceived by Defendant in connection with the marketing and sale of Annuity Contracts by being informed of the fact and amount of additional compensation that LPL would receive. Had Plaintiff and Class members known the true facts concerning Defendant's relationship with a commitment to the Participating Insurance Companies through the subject Undisclosed Fee Sharing Agreements, Plaintiff and Class members would not have purchased Annuity Contracts as recommended by Defendant for Participating Insurance Companies, and Plaintiff and the Class would not have subscribed (paid fees) to LPL for its fictitious, "objective" and "unbiased" services.

43. By reason of the conduct alleged herein, LPL knowingly or recklessly, directly and indirectly, has violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that it: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their purchases of Annuity Contracts.
44. Plaintiff and Class members have suffered damages in that, in reliance on the representations of fact and material omissions made by Defendant LPL, they paid artificially inflated prices for Annuity Contracts and were denied benefits to which they were entitled for financial services while not receiving the value of the services for which they paid. This outcome was the result of Defendant's violations of §10(b) of the Exchange Act and SEC Rule 10b-5.

SECOND CAUSE OF ACTION

Violations of Section 206 of the Investment Advisors Act

[15 USCS §80-61]

45. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 43, inclusive, as though set forth fully herein.

46. Defendant LPL has violated the Investment Advisors Act anti-fraud provisions, Section 206, which makes it unlawful for an investment advisor to directly or indirectly:

(1) To employ any device, scheme, or artifice to defraud any client or prospective client;

(2) To engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client;

(3) Acting as a principal for its own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting, and obtaining the consent of the client to such transaction; or

(4) To engage in any act, practice or course of business that is fraudulent, deceptive, or manipulative.

47. Moreover, Section 206 imposes upon the financial advisor a fiduciary duty owed to Plaintiff and Class members by operation of law. As a fiduciary, LPL owes its clients more than honesty and good faith alone; LPL has an affirmative duty to make full and fair disclosure of all material facts, particularly where the adviser's interest may conflict with the client's.

Pursuant to this duty, it was incumbent upon LPL to at all times, act in its client's best interest.
and its conduct is measured against a higher duty than that used for mere commercial
transactions. As an adviser, LPL was required to be sensitive to the possibility of rendering less
than disinterested advice, whether consciously or unconsciously, and can be found liable even
where it did not intend to injure a client and can be faulted even if a client does not suffer a
monetary loss.

48. By representing that it provides independent professional financial services
involving evaluation of a client's personal financial circumstances when recommending an
Annuity Contract but failing to disclose to its clients that it benefits by Undisclosed Fee Sharing
Agreements with Participating Insurance Companies providing undisclosed compensation to LPL
for steering client purchases LPL breached its duty. By virtue of the Undisclosed Fee Sharing
Agreements discussed herein, Defendant is and was conflicted and incapable of providing
independent, unbiased financial advice and thereby breached its fiduciary duty to Plaintiff and
other members of the Class.

49. Moreover, through the steering agreements and undisclosed compensation
perpetrated a fraud on LPL clients and constituted "a devise and/or scheme," designed to allow
LPL to benefit from the trust placed by clients that allow LPL's misconduct to take place
unchallenged. Plaintiff and Class members have been so similarly induced to rely on Defendant,
placed their trust and dollars in Defendant's care and have been damaged as a result thereof.

50. By reason of the activities described above, Defendant, directly and indirectly, by
the use of the means and instrumentalities of interstate commerce and by the use of the mails,
while acting as an investment adviser, employed devices, schemes, and artifices to defraud
advisory clients or prospective advisory clients.

51. As a result of Defendant's breach of its fiduciary duty and misconduct in
connection with its financial advisory services in violation of Section 206 of the Financial
Advisors Act, Plaintiff and Class members have been damaged in an amount to be proven at trial.

THIRD CAUSE OF ACTION
Unjust Enrichment

52. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 50
as though set forth fully herein.

53. As a result of the conduct described above, Defendant received ill-gotten and undeserved gains and was, therefore, unjustly enriched of financial advisory fees and other undisclosed compensation in an amount to be ascertained.

54. Defendant is aware of the ill gotten gains it has gained at the expense of Plaintiff and Class members and has nonetheless accepted and retained those benefits

55. Accordingly, Defendant has unjustly enriched itself and equity demands that it account for and make restitution of and for the benefits it has so unjustly received.

**PRAYER**

Plaintiff prays for judgment on his own behalf and on behalf of Class Members against Defendant as follows:

1. Declaring this action to be a proper Class action under Rule 23 of the Federal Rules of Civil Procedure;
2. Awarding compensatory damages in favor of Plaintiff and Class members against Defendant for the damages sustained by them as a result of the acts and transactions alleged herein, together with interest thereon;
3. Awarding Plaintiff the fees and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys and experts, and other costs;
4. Awarding Plaintiff and Class Members injunctive and/or equitable relief including restitution and disgorgement;
5. Other and further relief as this Court may deem just and proper under the circumstances.

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CLASS ACTION COMPLAINT -17-
JURY TRIAL DEMAND

Plaintiff demands a jury trial of all issues so triable.

Respectfully Submitted,

DATED: 1/26/05

FINKELSTEIN & KRINSK LLP

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CIVIL COVER SHEET

The JS-44 civil covering sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (See Instructions on the Second Page of This Form.)

1 (a) PLAINTIFFS

THE PARTON REVOCABLE FAMILY TRUST, DTD 10/20/1997, on behalf of itself and all others similarly situated

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(Except in U.S. Plaintiff Cases)

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II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

☐ U.S. Government Plaintiff (U.S. Government Not a Party)

☐ U.S. Government Defendant

☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX ONLY)

(For Diversity Cases Only)

PTDEF

Citizen of This State

☐ 1

Incorporated or Principal Place of Business in This State

☐ 4

Citizen of Another State

☐ 2

Incorporated or Principal Place of Business in Another State

☐ 5

Citizen or Subject of a Foreign Country

☐ 3

Foreign Nation

☐ 6

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☐ Original Proceeding

☐ 5 Remanded from Appellate Court

☐ 6 Transferred from another district (specify)

☐ 3:10pm

☐ 7 Appeal to District Judge from

☐ 4 Restated or

Magistrate Judgment

☐ 5

VII. REQUESTED IN

☐ CHECK IF THIS IS A CLASS ACTION

☐ 6 Multidistrict Litigation

☐ 7 Appeal to District Judge from

☐ 1

REMEDY DEMAND: $1,005

VIII RELATED CASES (If any. See Instructions): JUDGE

DATE

SIGNATURE OF ATTORNEY OF RECORD

ORIGINAL

344

(Rev. 05/14)

This form is used for all civil complaints

105 CV 015 9 JM