This is a class action lawsuit brought by plaintiff Jane C. Westbrook, individually and on behalf of all similarly situated purchasers of variable annuity insurance contracts bought through Defendant Merrill Lynch & Co., Inc., between January 1, 1990, and January 21, 2005, inclusive, (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act"). Plaintiff alleges upon personal knowledge as to herself and her 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:

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INTRODUCTION

1. This action challenges Defendant Merrill Lynch's (hereafter "Defendant" or "Merrill" 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 Merrill Lynch sales and marketing material.

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. Defendant Merrill is a Delaware corporation that, through its subsidiaries and affiliates, including Merrill Lynch Investment Management, LP, its wholly-owned broker-dealer subsidiary, provides capital markets services, investment banking and advisory services, wealth
management, asset management, insurance, banking and related products and services. It is one
of the world's largest diversified financial services companies. In addition to being a securities
broker, it also provides its customers with professional financial and investment advisory
services concerning, among other things, variable annuity insurance contracts and variable
insurance products. Merrill's customers include investors looking to procure, among other
things, variable annuities contracts and Merrill 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, Merrill 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, Merrill maintains secret Undisclosed Payment Agreements with a
number of insurance company underwriters of Annuity Contracts inducing Merrill to "steer"
Merrill clients to them under arrangements providing that Merrill 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
Merrill. These actions cause the insurance companies to collect higher premiums than would be
paid in a truly competitive market and, correspondingly, allows Merrill to receive a higher
amount of compensation from the annuity transaction than disclosed to the client in the annuity's
prospectus and related Merrill materials. Defendant has effectuated this improper conduct
through written undisclosed contingent fee sharing agreements ("Undisclosed Contingent Fee
Sharing Agreements") between Merrill and certain insurance companies ("Participating
Insurance Companies") whose annuity products are sold to Merrill clients.

5. These Undisclosed Fee Sharing Agreements, which have been in effect since at
least January 1, 1990, provide additional, undisclosed compensation to Merrill based on factors
such as the volume of Annuity Contracts Merrill places with given participating insurance
companies, the persistency of the annuity business Merrill 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 Merrill
and the Participating Insurance Companies. The Undisclosed Fee Sharing Agreements harm
Merrill's customers by, inter alia, creating a conflict of interest between Merrill'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, Merrill 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, Merrill 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

JURISDICTION AND VENUE

7. The claims asserted herein arise under Section 10(b) of the Securities Exchange
Act of 1934 and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5) and section 206 of
the Investment Advisors Act (15 U.S.C. §80-6). Jurisdiction exists pursuant to §27 of the

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.

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CLASS ACTION COMPLAINT
THE PARTIES

10. Plaintiff Jane C. Westbrook, a resident of Santee, California, is a retired elderly investor. Plaintiff is a client of Merrill which acted in its capacity as a broker and advisor to Plaintiff in the management of Plaintiff's retirement portfolio. Merrill recommended to Plaintiff and carried out the purchase of a variable Annuity Contract using funds entrusted to Merrill by Plaintiff. Plaintiff purchased and paid the premiums for the variable Annuity Contract and was damaged by Defendants conduct as alleged herein.

11. Defendant Merrill is a registered Investment Advisor (CRD# 105068), a publicly held company listed on the New York Stock Exchange, and a member of the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD). Merrill's principal offices are located at 4 World Financial Center, New York, New York.

12. Merrill also provides financial advisory services and brokers the sale of securities and other financial instruments to private investors. Merrill has approximately 2,000, employees between 500 and 1,000 of whom provide investment advisory services to Merrill clients. Through Merrill Lynch Investment Managers, Merrill Lynch & Co. proclaims itself to be one of the world's largest managers of financial assets, with assets under management of $500 billion at the end of 2003.

FACTUAL ALLEGATIONS

13. Merrill 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. Merrill's brokering services include assisting its clients in the procurement of variable annuity insurance products as part of their Merrill portfolios.

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

15. Merrill represents that it is a highly-skilled insurance 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. Merrill 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. Merrill 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, Merrill represents expertise in managing the assets of the individual investor. Through its website, it promises: "Our goals are aligned with yours" "Dedicated sales, marketing, finance, technology, operations, legal, compliance and audit professionals - all experts in their fields - support our investment professionals. We also have at our disposal the resources and reach of Merrill Lynch, one of the world's leading financial services companies." Merrill's further represents that "activities that are not directly related to enhancing investment performance are separated from portfolio management," is an affirmative statement that is not only deceptive but contradicted by its self-interested dealings as described herein.

17. Merrill 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, Merrill 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 - Merrill 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
1. Agreements provide a disincentive to Merrill employees from properly performing their duties to provide unbiased brokerage and other financial services.

18. The Undisclosed Fee Sharing Agreements provide Merrill 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 Merrill places with a given insurance company, the persistency of the renewal business Merrill brings to that company and the profitability of the subject policies. These Undisclosed Fee Sharing Agreements further provide that Merrill's sales of non-proprietary 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, Lincoln Life, The Hartford, John Hancock, Manulife, Nationwide, and AIG SunAmerica.

19. Plaintiff Jane Westbrook sought financial advice from a duly authorized and licensed Merrill agent in connection with investments from her investment account maintained with Merrill. Ms. Westbrook relied upon the representations of Merrill that Merrill would provide knowledgeable and professional advice regarding her financial services needs. Merrill never informed Ms. Westbrook 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 Merrill for the sale of certain Annuity Contracts.

20. Thereafter, Merrill provided Ms. Westbrook with a copy of the prospectus and standard form annuity contract. The annuity solicited was called the Anchor National Polaris I variable annuity, underwritten by AIG SunAmerica and Merrill recommended its purchase from funds in Ms. Westbrook's investment account. At no time during the sales presentations by Merrill 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 Merrill's sales materials. Relying on the information from the materials, on or about January 13, 1997, Ms. Westbrook purchased an Annuity Contract as recommended by Merrill. Ms. Westbrook's Annuity Contract and prospectus provide for certain and specific compensation to
Merrill. However, unknown and undisclosed to Plaintiff, Merrill had previously entered into an
Undisclosed Fee Sharing Agreements with AIG SunAmerica providing Merrill 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 by Merrill and AIG SunAmerica. Merrill never informed
Ms. Westbrook that it would or could profit in addition to that represented to Ms. Westbrook as
provided in the Annuity Contract and prospectus.

21. The Undisclosed Fee Sharing Agreement between Merrill and AIG SunAmerica
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 Undisclosed Fee Sharing Agreements, Direct Vendor Marketing
Undisclosed Fee Sharing Agreements, or Override Undisclosed Fee Sharing Agreements,
provide undisclosed compensation to Merrill, including certain undisclosed fees and costs paid
by the insurance companies to Merrill, and enable it to conceal from its clients the fact that these
Undisclosed Fee Sharing Agreements exist and that Merrill receives this additional and
undisclosed compensation on the sale of Annuity Contracts. In return, Merrill steers clients to
purchase annuities underwritten by Participating Insurance Companies with which Merrill has
entered into Undisclosed Fee Sharing Agreements.

22. As part of its financial advisement services, Merrill presents to potential
customers written proposals and statements for analyzing and improving their financial security
and the long-term yield(s) of their investments. Merrill gathers personal and proprietary
information about their clients and makes recommendations for the allocation of client assets.
For these services, Merrill 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 Merrill's
customers. Merrill fails to include a disclosure of the additional compensation paid to Merrill for
the sale of Annuity Contracts.

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CLASS ACTION COMPLAINT
23. Merrill fails to disclose to Merrill'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 Merrill by the Participating Insurance Companies. This additional compensation includes unlawful kickbacks tied to (a) volume of premiums generated by Merrill's sales of the Participating Insurance Companies' products, (b) Merrill's ability to assist the Participating Insurance Companies retain their existing business with Merrill's clients, i.e., persistency, and (c) the profitability of the book of business purchased by Merrill's clients.

24. Merrill steers a large portion of its Annuity Contracts business to AIG SunAmerica and other Participating Insurance Companies with which it has entered into Undisclosed Fee Sharing Agreements. Merrill has significant influence and control over its relationships with the insurance companies because Merrill places hundreds of millions of premium dollars with those companies.

25. Although Merrill 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) Merrill has provided independent, unbiased brokering advice; (b) Merrill 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 Merrill at the outset.

26. Merrill has profited enormously from its fraudulent representations, material omissions and failures to disclose, inducing consumers to use Merrill'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 Merrill Lynch 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 Garamendi 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. In a recent response, Merrill made additional disclosures regarding its variable annuity commissions on its website, in a document entitled Purchasing a Variable Annuity at Merrill Lynch; A client Disclosure Pamphlet," copyright 2005. (See, Exhibit A attached hereto.)

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 Merrill and the Annuity Contract and related contract materials approved and disseminated by Participating Insurance Companies and Merrill to Plaintiff and Class members fail to disclose that Merrill 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 Merrill's advise and recommendation of the Annuity Contracts were not based on Merrill's consideration of their best interests and in light of all such available products, as Merrill represented, but were limited to those Annuity Contracts produced by the Participating Insurance Companies.

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CLASS ACTION COMPLAINT
CLASS ALLEGATIONS

29. Plaintiff Jane C. Westbrook 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 Merrill that were subject to an Undisclosed Fee Sharing Agreements with the producing insurance company to provide undisclosed compensation to Merrill. 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.

CLASS ACTION COMPLAINT
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 Merrill 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 Merrill'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 Merrill 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), Merrill, 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., "Our goals are aligned with yours") 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 Merrill received from the Participating Insurance Companies and, also, concealed that Merrill 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 Defendants' representations in conjunction with its recommendation of AIG SunAmerica 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 Merrill 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 Merrill for its fictitious, "independent" and unbiased services.

43. By reason of the conduct alleged herein, Merrill 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 Merrill, 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 Merrill 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, Merrill owes its clients more than honesty and good faith alone; Merrill 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 Merrill 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, Merrill 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 Merrill for steering client purchases Merrill 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 Merrill clients and constituted "a devise and/or scheme," designed to
allow Merrill to benefit from the trust placed by clients that allow Merrill's misconduct to take place unchallenged. Plaintiff and Class members have been 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.

**JURY TRIAL DEMAND**

Plaintiff demands a jury trial of all issues so triable.

DATED: 1/28/05

FINKELSTEIN & KRINSKY LLP

By: [Signature]

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INVESTMENTS

Purchasing a Variable Annuity at Merrill Lynch

A Client Disclosure Pamphlet

All variable annuities available at Merrill Lynch are offered through Merrill Lynch Life Agency Inc. (MLLA) as part of our client commitment, we would like to let you know how MLLA and your Financial Advisor are compensated when you purchase a variable annuity from Merrill Lynch.

If your annuity is issued by an insurance company owned by Merrill Lynch (Merrill Lynch Life Insurance Company and ML Life Insurance Company of New York), MLLA receives compensation in the form of commissions from the insurance company.

The commissions paid to MLLA are as follows:
- MLLA receives a maximum first-year sales commission from the insurance company for the sale of the annuity of up to 5.10% of each annuity premium you pay, depending on the surrender charge structure of the annuity purchased.
- MLLA also receives an annual "trail commission," a payment made by the insurance company to MLLA over time for sales of its annuities. In subsequent years of the annuity, this trail commission is up to 0.85% per year of the value of your annuity, depending on the surrender charge structure of the annuity purchased.
- Please note that the first-year sales commission and trail commissions are paid to MLLA directly by the insurance company and do not result in any additional direct charge to you.

If your annuity is issued by an insurance company not owned by Merrill Lynch and with whom MLLA has a distribution agreement, MLLA likewise receives compensation in the form of commissions from the insurance company.

The commissions paid to MLLA are as follows:
- MLLA generally receives a maximum first-year sales commission from the insurance company for the sale of the annuity of up to 5.75% of each annuity premium you pay, depending on the surrender charge structure of the annuity purchased. There is only one product which is an exception, the GE Retirement Answer annuity. For that product, MLLA receives a first-year sales commission of 5.75%.
- MLLA also receives an annual "trail commission," a payment made by the insurance company to MLLA over time for sales of its annuities. In subsequent years of the annuity, this trail commission is up to 1.20% per year of the value of your annuity, depending on the surrender charge structure of the annuity purchased.
- Please note that the first-year sales commission and trail commissions are paid to MLLA directly by the insurance company and do not result in any additional direct charge to you.

MLLA also receives a distribution fee/marketing payment each year directly from distributors of variable annuities issued by insurance companies not owned by Merrill Lynch for agreeing to distribute the insurance companies' products. The distribution fee/marketing payment is paid by those distributors out of their own assets and does not result in any additional direct charge to you.
The distribution fee/marketing payment consists of a fixed dollar payment annually (which does not vary from distributor to distributor), plus additional revenue of .06% paid over the year based on total premiums generated by MLLA for each distributor.

MLLA applies the distribution fee/marketing payment against its costs incurred to review annuity products and the promotional material related to their sale; to support and update these products in MLLA's administrative sales systems; and to provide training and recognition for its sales personnel, including Financial Advisors. Each distributor is allowed to participate in a specified number of sales meetings periodically held throughout the country. These meetings are designed to educate MLLA's sales personnel about the features and appropriate application of the products sold by each distributor. While Financial Advisors may be invited to attend these meetings upon attaining certain sales goals, these goals do not require the sale of any specific insurance company's annuity products. Under no circumstance does MLLA encourage or insist Merrill Lynch Financial Advisors to sell the products of one company over another company.

As part of the wealth management process at Merrill Lynch, your Financial Advisor assumes the task of researching and selecting the right annuity product based on your particular goals, and for variable annuities, building an appropriate portfolio from the annuity's available investment options and selecting appropriate features within the annuity. Your Financial Advisor receives a portion of MLLA's first-year sales commission and subsequent trail commissions for the annuity sale. The portion that your Financial Advisor receives as a first-year sales commission is up to 2.30% per year of each annuity premium you pay, depending on the surrender charge structure of the annuity purchased. The portion that your Financial Advisor receives as an annual trail commission is up to .51% per year of the value of your annuity, depending on the surrender charge structure of the annuity purchased.

Please note that Financial Advisors do not receive different levels of compensation based on which insurance company's annuity product they sell, nor do they receive different levels of compensation for selling Merrill Lynch annuity products rather than those issued by an insurance company that is not owned by Merrill Lynch. If an annuity is sold as a replacement for an existing annuity which was issued by the same insurance company, Financial Advisors could receive reduced compensation or no compensation.

We believe these compensation and distribution arrangements help Merrill Lynch to have a full complement of annuity products that meet our clients' needs and provide a level playing field for the sales of these products by our Financial Advisors.

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