This is a class action lawsuit brought by plaintiff William L. Dornon individually and on behalf of all similarly situated purchasers of variable annuity insurance contracts bought through Defendant Morgan Stanley DW, Inc. between January 1, 1990 and January 20, 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 himself and his 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 Morgan Stanley DW, Inc.’s (hereafter “Defendant” or “MSDW”) 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 material financial interest in the transaction and that the Annuity Contracts it offers are limited to product produced by companies that have surreptitiously agreed to provide MSDW compensation in connection with the sale(s) of Annuity Contracts in addition to that disclosed in the annuity’s underlying prospectus and other Morgan Stanley sales 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 risks on the annuitant and none on the insurance company that underwrites and issues the annuity contract.

3. Defendant (MSDW) is the wholly-owned broker-dealer subsidiary of Morgan Stanley, Inc., one of the world’s largest diversified financial services companies. In addition to being a securities broker, MSDW also provides its customers with professional financial and investment advisory services concerning, among other things, variable annuity insurance contracts and variable insurance products. MSDW’s customers include investors looking to procure, among other things,
variable annuities contracts and MSDW 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, MSDW 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' funds.

4. Rather than providing independent and unbiased brokerage services to its clients on the terms disclosed, MSDW maintains secret contingent fee sharing agreements with a number of insurance company underwriters of Annuity Contracts inducing MSDW to "steer" MSDW clients to them under arrangements providing that MSDW collects (undisclosed) commissions and fees from the sale of the Annuity Contract(s). This normally occurs by the insurance companies relating a portion of the premium which is thereafter secretly remitted to MSDW. These actions cause the insurance companies to collect higher premiums than would be paid in a truly competitive market and, correspondingly, allows MSDW to receive a higher amount of compensation from the annuity transaction than disclosed to the client in the annuity's prospectus and related MSDW materials. MSDW has effectuated this improper conduct through undisclosed written compensation agreements ("Contingent Fee Sharing Agreements") between MSDW and certain insurance companies ("Participating Insurance Companies") whose annuity products are sold to MSDW clients. These Contingent Fee Sharing Agreements, which have been in effect since at least January 1, 1990, provide additional, undisclosed compensation to MSDW based on factors such as the volume of Annuity Contracts MSDW places with a given participating insurance company, the persistency of the annuity business MSDW brings to that company and the profitability of the subject Annuity Contracts to the Participating Insurance Company (in terms of the contract administrative fees, account loads and other charges that are collected). These Contingent Fee Sharing Agreements are akin to a profit-sharing arrangement between MSDW and the Participating Insurance Companies. The Contingent Fee Sharing Agreements harm MSDW's customers by, *inter alia*, creating a conflict of interest between MSDW's financial interest in maximizing income and selling its customers optimum annuity contracts. These arrangements also inflate the cost to the client of the Annuity Contract(s) placed.
5. Under its marketing and brokerage scheme, MSDW 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, MSDW has a duty to find for its customers the best variable annuity at the lowest cost. Defendant MSDW 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 Contingent Fee Sharing Agreements, accordingly, operate to defraud MSDW clients in violation of the Securities Exchange Act and the rules promulgated thereunder.

JURISDICTION AND VENUE


7. 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.

8. In connection with the acts and omissions alleged in this complaint, Defendants, 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

9. Plaintiff William L. Dornon, a resident of San Marcos, California, is a retired elderly investor. Plaintiff is a client of MSDW which acted in its capacity as a broker and advisor to Plaintiff in the management of Plaintiff’s retirement portfolio. MSDW recommended to Plaintiff and carried out the purchase of a variable Annuity Contract using funds entrusted to MSDW by Plaintiff. Plaintiff purchased and paid the premiums for the variable Annuity Contract and was damaged by Defendants’ conduct as alleged herein.

10. Defendant MSDW is a registered Investment Advisor (CRD# 7556). MSDW provides financial advisory services and brokers the sale of securities and other financial instruments.
to private investors. MSDW sells the subject Annuity Contracts in the State of California and throughout the United States. MSDW is a broker-dealer registered with the Commission pursuant to Section 15 of the Exchange Act since 1968, and is a wholly-owned subsidiary of the publicly traded entity Morgan Stanley. It is also a member of the National Association of Securities Dealers ("NASD"). Plaintiff purchased his Annuity Contract through MSDW offices at 1615 S. Mission Road, in Fallbrook, California.

11. Morgan Stanley, Inc., ("MSI") is the parent corporation of MSDW. MSI maintains approximately 500 branch offices which provide retail brokerage services nationwide. MSI is 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) with principal offices in New York, New York. MSI is a Delaware corporation and has approximately 9,000 employees who provide investment advisory services to clients through its broker-dealer subsidiary, MSDW.

12. Each of the Defendants has approved, ratified, controlled, directed and/or otherwise been legally responsible for all aspects of the wrongful acts and practices of the others and about which Plaintiff complains. A unity of interest exists between the Morgan Stanley defendants such that justice dictates that any liability created by the acts and/or omissions of one be imposed upon the other who should be held legally and financially responsible for all aspects of the wrongful acts and practices about which Plaintiff complains. Each of the Defendants is the alter-ego of the other and, accordingly, liability should be imposed upon the other on that basis.

FACTUAL ALLEGATIONS

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

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

15. MSDW 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. MSDW 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. MSDW 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, MSDW represents expertise in managing the assets of the individual investor. Its website states that “Morgan Stanley has earned a worldwide reputation for excellence in financial advice and market execution” and “our Financial Advisors will evaluate your situation and help you determine which strategies are right for you” and further promises “an in-dept review or your current situation” and a “comprehensive retirement strategy for you and your family.”

17. MSDW makes these public representations while failing to disclose that it has an arrangement compromising its independence as provided by its Contingent 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, MSDW steers its customers to purchase the policies sold by the Participating Insurance Companies with which it has Contingent Fee Sharing Agreements. Rather than acting in the best interests of its customers - as it is required to do - MSDW allows its own interests to first be maximized by the unlawful compensation it receives under the Contingent Fee Sharing Agreements with Participating Insurance Companies. These Contingent Fee Sharing Agreements provide a disincentive to MSDW employees from properly performing their duties to provide unbiased brokerage and other financial services.
17. The Contingent Fee Sharing Agreements provide MSDW with undisclosed compensation including override commissions, aka "kickbacks," generated by the premiums from the sale of the Annuity Contracts based on the volume of insurance MSDW places with a given insurance company, the persistency of the renewal business MSDW brings to that company and the profitability of the subject policies. These Contingent Fee Sharing Agreements further provide that MSDW's sales of Annuity Contracts are limited to those products offered by the Participating Insurance Companies. The Participating Insurance Companies include, inter alia, Lincoln Life, The Hartford, John Hancock, Manulife and Nationwide.

18. In or about May, 2000, Plaintiff William L. Dornon sought financial advice from Mary A. Paget, a duly authorized and licensed MSDW agent in connection with investments from his pre-existing Individual Retirement Account ("IRA") maintained with MSDW. Mr. Dornon relied upon the representations of Ms. Paget and MSDW that MSDW would provide knowledgeable and professional advice regarding his financial services needs. Ms. Paget and MSDW never informed Mr. Dornon that the annuity products offered were limited to products offered by the Participating Insurance Companies and that it had entered into an Contingent Fee Sharing Agreements providing undisclosed compensation to MSDW for the sale of certain Annuity Contracts.

19. A short while following this consultation, Ms. Paget and MSDW provided Mr. Dornon with a copy of the prospectus and standard annuity contract. The annuity pushed was called Select Dimensions Variable Annuity, underwritten by The Hartford Insurance Company and MSDW recommended its purchase from funds in Mr. Dornon's IRA account. At no time during the sales presentations by Ms. Paget and MSDW for The Hartford's Select Dimensions Variable Annuity did the representations made materially differ from the information contained in the pre-printed, standard form annuity contract and prospectus or MSDW's sales materials. Relying on the information from the materials, on or about June 29, 2000, Mr. Dornon purchased an Annuity Contract as recommended by MSDW. Mr. Dornon's Annuity Contract and Prospectus provides for certain and specific compensation to MSDW. However, unknown and undisclosed to the plaintiff, MSDW had previously entered into an Contingent Fee Sharing Agreements with The Hartford.
providing MSDW 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 MSDW and The Hartford. MSDW never informed Mr. Dornon that it would or could profit in addition to that represented to Mr. Dornon as provided in the Annuity Contract.

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

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

22. MSDW fails to disclose to MSDW’s clients that they have Contingent 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 MSDW by the Participating Insurance Companies. This
additional compensation includes illegal kickbacks tied to (a) volume of premiums generated by MSDW's sales of the Participating Insurance Companies' products, (b) MSDW's ability to assist the Participating Insurance Companies retain their existing business with MSDW's clients, i.e., persistency, and (c) the profitability of the book of business purchased by MSDW's clients.

23. MSDW steers a large portion of its Annuity Contracts business to The Hartford and other Participating Insurance Companies with which it has entered into Contingent Fee Sharing Agreements. MSDW has significant influence and control over its relationship with the insurance companies because MSDW places hundreds of millions of premium dollars with those companies.

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

25. MSDW has profited enormously from its fraudulent representations, material omissions and failures to disclose, inducing consumers to use MSDW'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 Contingent Fee Sharing Agreements and the conflicts of interest they cause.

26. 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 Morgan Stanley 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. In fact, on January 10, 2004, the Massachusetts Secretary of State issued subpoenas for Morgan Stanley’s records as part of its investigation into whether the brokerage firm failed to disclose payments received from insurers to sell variable annuities, the very practice of which Plaintiff complains herein. (See Exhibit 1, article from the January 20, 2004 edition of the Boston Herald.com.)

**FRAUDULENT CONCEALMENT**

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

**CLASS ALLEGATIONS**

28. Plaintiff William L. Dornon 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 MSDW that were subject to an Contingent Fee Sharing Agreements with the producing insurance company to provide undisclosed compensation to MSDW. Excluded from the Class are Defendants, any entity in which Defendants have controlling interest or is a parent or subsidiary of or is controlled by Defendants, and the officers, directors, broker-agents, affiliates, legal representatives, heirs, predecessors, successors or assigns of Defendants.
29. 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.

30. 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 Defendants’ practice of collecting undisclosed compensation violates Section 10(b) of the Exchange Act and Rule 10b-5;

   (b) Whether Defendants 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 Defendants’ 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 Defendants;

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

   (f) Whether Defendants’ practice of collecting undisclosed compensation should be enjoined.

31. Plaintiff’s claims are typical of the claims of Class Members, all of whom have been the subject of MSDW’s 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 37, inclusive, as though set forth fully herein.

38. MSDW knew, or was reckless in failing to know, of the omissions of material fact contained in its Contingent Fee Sharing Agreements with Participating Insurance Companies concerning the Defendants’ marketing and sale of Annuity Contracts, as set forth above, especially in light of Defendants’ representations in its marketing materials that MSDW would provide professional unbiased financial advisement services. Specifically, Defendants:

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

(b) knew that it was 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 MSDW received on the sale of Annuity Contracts indirectly and indirectly, from the Participating Insurance Companies and the inherent conflicts that were created, and

(d) knew that by omitting the fact above, Defendants 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, Defendants 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 Contingent Fee Sharing Agreements at least by November of 1989 (effective January 1, 1990), MSDW, 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 Financial Advisors will evaluate your situation and help you determine which strategies are
right for you”) relative to the circumstances under which they were made not misleading.

41. Since at least January of 1990, Defendants, 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 MSDW received from the Participating
Insurance Companies and, also, concealed that MSDW 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 The Hartford Select Dimension Variable
Annuity product without adequate disclosure of the above material facts. Plaintiff and Class members
were misled and deceived by Defendants in connection with the marketing and sale of Annuity Contracts
by being informed of the fact and amount of additional compensation that MSDW would receive. Had
Plaintiff and Class members known the true facts concerning Defendants’ relationship with a
commitment to the Participating Insurance Companies through the subject Contingent Fee Sharing
Agreements, Plaintiff and Class members would not have purchased Annuity Contracts as recommended
by Defendants for Participating Insurance Companies, and Plaintiff and the Class would not have
subscribed (paid fees) to MSDW for its fictitious, “independent” and unbiased services.

43. By reason of the conduct alleged herein, MSDW 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 Defendants, 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 Defendants' 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 §80-6]
[Against Defendant Morgan Stanley DW, Inc.]

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

46. Defendant MSDW 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, MSDW owes its clients more than honesty and good faith alone; MSDW 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 MSDW 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, MSDW 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 Contingent Fee Sharing Agreements with Participating Insurance Companies providing undisclosed compensation to MSDW for steering client purchases. MSDW breached its duty. By virtue of the Contingent 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.

Moreover, through the steering agreements and undisclosed compensation perpetrated a fraud on MSDW clients and constituted "a devise and/or scheme," designed to allow MSDW to benefit from the trust placed by clients that allow MSDW'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.

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.

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

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

As a result of the conduct described above, Defendants 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.

Defendants are 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.

Accordingly, Defendants have unjustly enriched itself and equity demands that it account
for and make restitution of and for the benefits they have so unjustly received.

PRAYER

Plaintiff prays for judgment on his own behalf and on behalf of Class members against Defendants 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 Defendants 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; and

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: 1/21/05

By:

Jury trial demand

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Attorneys for Plaintiff and the Class
BOSTON - Secretary of State William Galvin said Thursday that his office has subpoenaed Morgan Stanley in an investigation into whether brokerages failed to disclose payments received from insurers to sell variable annuities.

The subpoenas come as investigators in Massachusetts and elsewhere are increasingly focusing on secret payments from insurers beyond regular broker commissions, and the influence those payments have on brokers who are supposed to represent clients' interests rather than steer business to carriers offering the highest fees.

"Essentially, it is pay-to-play compensation to push certain products," Galvin said in an interview with The Associated Press.

The subpoena to the Wall Street brokerage giant Morgan Stanley was issued Jan. 10 in an investigation into possible civil violations of disclosure requirements in the Massachusetts Securities Act. Forbes.com, the online publication of Forbes magazine, reported the subpoena on Wednesday. It seeks information including which insurers' variable annuities Morgan Stanley sells and any undisclosed payment agreements for promoting products.

Galvin told the AP his office also has recently issued subpoenas to "other entities" as part of the same probe into sales of variable annuities, which provide annuities payments, a death benefit and the option to invest in the stock market through separate mutual fund accounts.

Galvin declined to identify other parties that had received subpoenas, and he did not offer other details.

He said the investigation was in an early stage. His office has not yet received a response from Morgan Stanley.

Morgan Stanley spokeswoman Andrea Slattery said in a statement that the firm is "confident that our practices in this area are appropriate, and have been properly disclosed." She declined further comment.

The National Association of Securities Dealers, an industry organization, is conducting its own review of Morgan Stanley's variable annuities sales practices.

That review grew out of an arbitration claim a San Diego attorney recently filed with the NASD on behalf of a Morgan Stanley client through the industry association's dispute resolution process.
"We're aware of the arbitration claim, and we are looking into the matter," NASD spokesman Herb Perone said.

Perone said NASD has brought more than 80 enforcement actions over variable annuity sales practices in recent years, and has proposed a rule change pending before the Securities and Exchange Commission that would tighten disclosure requirements involving sales.

The scrutiny of Morgan Stanley comes as Galvin's office also pursues a previously disclosed administrative complaint against the firm alleging it failed to properly disclose extra payments received for selling mutual funds. A ruling is expected soon in that case, Galvin said.

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