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Illinois Supreme Court Affirms Fixed Index Annuities Are Not Securities

NAFA Provides Support to Critical Industry Victory

WASHINGTON (Mar. 21, 2019) — In a unanimous decision, the Illinois Supreme Court has affirmed the judgment of the Illinois Appellate Court and ruled that fixed indexed annuities are not securities under Illinois state law.

This long-awaited decision reinforces the work NAFA and the fixed annuity industry as a whole are doing to protect the future of these products and their distribution, in addition to the livelihoods of more than 20,000 agents and advisors licensed to sell fixed annuities in the state of Illinois alone.

“As discussions about fixed annuity regulation and legislation continue to evolve at both the state and federal levels, NAFA remains vigilant in its advocacy efforts to protect fixed annuities, the interests of our members and the retirement future of every American. Our association was actively involved in this case from its outset, and we are thrilled that our work, in partnership with our outside legal counsel, has resulted in a significant win for the industry,” said Pam Heinrich, general legal counsel of NAFA.

The case began when the Illinois Secretary of State brought an administrative action against Richard Van Dyke, who sold fixed indexed annuities to his clients. The Secretary eventually ruled that the annuities sold by Van Dyke were not only insurance products regulated by the Illinois Department of Insurance as they had been for decades, but were also subject to regulation by the Secretary as securities. The Secretary’s ruling was subsequently affirmed by the Sangamon County Circuit Court before appeal to the Fourth District Appellate Court of Illinois. In July 2016, a three-judge panel of the Appellate Court unanimously reversed the

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decisions of the Secretary and the circuit court, and, in a published opinion, held that fixed indexed annuities “are not securities under Illinois law.” The Illinois Supreme Court then granted the Attorney General’s request to review the Appellate Court decision.

On Mar. 21, 2019, the Supreme Court issued its own unanimous decision upholding the Appellate Court’s ruling that, under Illinois law, fixed indexed annuities are not securities. The Supreme Court’s decision was based on two basic points: (1) the language of the Securities Act itself did not allow for the regulation of fixed indexed annuities as securities, and (2) because such annuities were already regulated as insurance, it would be “incongruous” to also regulate them as securities. The Supreme Court also rejected the State’s alternative theory that even if the annuities were not securities, Van Dyke committed fraud in recommending them as an investment advisor, agreeing with the Appellate Court that the Secretary’s finding of fraud was unsupported by the evidence.

Immediately following the Secretary’s initial decision in April 2014, NAFA established a working group to address the matter. The Association then engaged the Chicago law firm of Quarles & Brady to assist in preparing an amicus brief in support of Van Dyke’s appeal in the Appellate Court — and later in opposition to the State’s appeal to the Supreme Court — emphasizing how the Secretary of State’s ruling would devastate the industry in Illinois.

King Poor, lead attorney from Quarles & Brady, commented, “As an amicus, NAFA’s focus was not to repeat the arguments of the parties, but rather to provide a unique voice in describing the workings of the fixed indexed annuity industry. Furthermore, it was critical to explain how regulating these annuities as securities would make Illinois the only state in the country to do so, potentially driving much of this \$4 billion annual business out of the state.”

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About NAFA

NAFA, the National Association for Fixed Annuities, is the premier trade association exclusively dedicated to fixed annuities. Our mission is to promote the awareness and understanding of fixed annuities. We educate annuity salespeople, regulators, legislators, journalists, and industry personnel about the value of fixed annuities and their benefits to consumers. NAFA’s membership represents every aspect of the fixed annuity marketplace covering 85% of fixed annuities sold by independent agents, advisors and brokers. NAFA was founded in 1998. For more information, visit www.nafa.com.