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Illinois Court Declares Fixed Indexed Annuities Are Not Securities

NAFA Filed Amicus Curiae Brief, Pushed for Published Decision

WASHINGTON (Sept. 21, 2016) — After three years of agency and court litigation, the Illinois Appellate Court for the Fourth District has ruled that, under Illinois law, fixed indexed annuities are only to be regulated as insurance products and not as securities. This comes as a major victory for the fixed annuity industry as a whole, in addition to the more than 20,000 agents and advisors licensed to sell fixed annuities in the state.

The case began as an administrative action brought by the Illinois Secretary of State against Richard Van Dyke. The Secretary eventually ruled that fixed indexed annuity products should be regulated not only as insurance, as they had been for almost 50 years, but also as securities under the Illinois Securities Department. Miscategorizing the product in this way would have added another complex layer of regulation to indexed annuity sales and created an unworkable environment for agents and ultimately hindering consumer access to these valuable products. After this ruling by the Secretary of State (which was later affirmed by the Sangamon County Circuit Court), 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, emphasizing how the Secretary of State's ruling could devastate the industry in Illinois. NAFA's brief also explained how the ruling had no support in any statute, rule or case law.

This past July, a three-judge panel of the Fourth District Appellate Court of Illinois unanimously reversed the circuit court's decision and the Secretary's final order. In doing so, the court stated

clearly that fixed indexed annuities “are not securities under Illinois law.” The court has since granted a motion in which NAFA joined that the opinion be published.

“NAFA determined that this was an important case on which to weigh in because of its potential industry-wide impact. Thanks to the hard work and support of NAFA membership in partnership with our outside legal counsel, this is the very outcome that we sought to achieve. While the decision by the Fourth District Court of Appeals itself is significant, the published order ensures that it stands as precedent that must be followed in the future,” said Chip Anderson, executive director of NAFA.

King Poor, lead attorney from Quarles & Brady, commented, “The court’s clear ruling in a published opinion provides much needed guidance that the law does not allow fixed indexed annuities to be regulated as securities. The historic regulation of these annuities as only insurance products remains intact.”

The State of Illinois has until Oct. 12, 2016, to seek review of the Appellate Court’s decision in the Illinois Supreme Court.

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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.