

JUDGE ASPEN
MAGISTRATE JUDGE KEYS
AO

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**JEFF PAUL, MARGARET PAUL, JIM FLECK,
AMY FLECK, PPS ADVERTISING INC.,
INTERNATIONAL PROFIT SYSTEMS INC.,
ON BEHALF OF THEMSELVES AND ALL
OTHERS SIMILARLY SITUATED,**

Plaintiffs,

**v.
AVIVA LIFE AND ANNUITY COMPANY,
(formerly AMER US LIFE INSURANCE
COMPANY, AVIVA LIFE INSURANCE
COMPANY and INDIANAPOLIS
LIFE INSURANCE COMPANY),**

Defendants.

Case Number

CLASS ACTION COMPLAINT

Plaintiffs, JEFF PAUL (“JEFF”), MARGARET PAUL (“MARGARET”), JIM FLECK (“JIM”), AMY FLECK (“AMY”), PPS ADVERTISING INC. (“PPS”), INTERNATIONAL PROFIT SYSTEMS INC. (“INTERNATIONAL”), on behalf of themselves and all others similarly situated, by and through their attorneys, Gold & Coulson, a partnership of professional and limited liability corporations and the law firm of Cin & Wagner for their Complaint against Defendants, AVIVA LIFE AND ANNUITY COMPANY (formerly AMER US LIFE INSURANCE COMPANY, AVIVA LIFE INSURANCE COMPANY and INDIANAPOLIS LIFE INSURANCE COMPANY (“INDIANAPOLIS”), based upon their own personal knowledge with respect to themselves and their own acts and on information and belief, in part through investigation of counsel, state as follows:

NATURE OF THE CASE

1. Plaintiffs as individuals and shareholders of closely held corporations and their closely held corporations are victims of multiple fraudulent acts by Defendant in connection with its creation and promotion of a program marketed as an employee benefit plan funded by the purchase of defendant's life insurance policies.

2. Defendant's program was presented to Plaintiffs and those they seek to represent, typically individuals in their 40's and 50's whose closely held corporations were earning substantial annual incomes, as a simple retirement pension plan as follows:

- a. the closely held corporations would establish an Internal Revenue Code Section 419 "*Welfare Benefit Plan and Trust*", hereinafter "419 Plan", with the closely held corporations' owners named as beneficiaries of the 419 Plan;
- b. the 419 Plan would purchase Defendant's specifically designed life insurance policies naming the 419 Plan the beneficiary of the policies;
- c. the funding of the 419 Plan's purchase of Defendant's specifically designed life insurance policies would be accomplished by the closely held corporations' annual contribution of substantial sums of money to the 419 Plan for 5 years which would be fully deductible, dollar for dollar, as a tax-deductible business expense on the closely held corporation's corporate tax return and which would be sufficient to pay the substantial annual premiums on Defendant's specifically designed life insurance policies;

- d. the 419 Plan's administrator would then pay the premiums each year for 5 years to Defendant to keep Defendant's specifically designed life insurance policies in effect;
- e. after 5 years the life insurance policies would be fully funded requiring no payment of additional premiums;
- f. during these five years, the cash surrender value of these policies would be either "0" or very small despite the substantial premiums being paid during these 5 years;
- g. after the 5th year, premium payments would stop, the closely held corporation would terminate the 419 Plan and the fully paid policies would be distributed outright to the closely held corporation's owners;
- h. the closely held corporation's owners would then have to recognize income in an amount equal to the very low cash surrender value of the life insurance policies in this 5th year and pay a one-time low income tax on this income;
- i. during the next five years the cash surrender value of these policies would grow substantially, without income tax consequences, however, the closely held corporations' owners could not access the value of these policies until the policies became 10 years old;
- j. after the 10th year, the closely held corporations' owners could access the substantial "springing cash value" of the life insurance policies with *no* income tax consequences, in the form of "borrowing".

3. The problem: Defendant's program never passed muster with the Internal Revenue Service ("IRS") which INDIANAPOLIS knew because on June 5, 1995 the IRS issued Notice 95-34 which, amongst other items, stated:

"In general, these arrangements [419 Plans] and other similar arrangements do not satisfy the requirements of the section 419(f)(6) exemption and do not provide the tax deductions claimed by their promoters for any one of several reasons, including the following..."

and that the IRS had, as of February 28, 2000, pursuant to Notice 2000-15, 2000 – 12I.R.B. 826, identified these types of Plans as "Listed Transactions," which the IRS considers to be an abusive tax shelter or transaction.

4. Defendant's program was nothing more than a profit scheme concocted by INDIANAPOLIS for INDIANAPOLIS which used its agents to make misrepresentations and provide misinformation to Plaintiffs and those they seek to represent pertaining to the economic and tax benefits of this concocted scheme.

5. In furtherance of this scheme, INDIANAPOLIS participated or assisted in breaches of fiduciary duty and breaches of good faith including self dealing, conversion of employee benefits plan assets and conversion of insurance premium payments.

6. As a result of Defendant's actions, Plaintiffs and those they seek to represent seek damages against Defendant for:(1) conducting the affairs of an enterprise through a pattern of racketeering in violation of section 1962 (c) of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c); (2) using a pattern of racketeering to acquire or maintain control over an enterprise in violation of section 1962(b) of RICO, 18 U.S.C. § 1962(b); (3) investing in an enterprise, income derived from a pattern of racketeering activity, in violation of section 1962(a) of RICO 18 U.S.C. §1962(a); (4) conspiring to violate sections

1962(a), (b), and (c) of RICO, in violation of § 1962(d) of RICO, 18 U.S.C. § 1962(d); (5) intentional misrepresentation; (6) negligent misrepresentation; (7) fraudulent concealment; and (8) civil conspiracy. Plaintiff also seeks equitable relief in the form of an accounting from INDIANAPOLIS of its disposition of funds belonging to Plaintiffs' and those they seek to represent.

PARTIES

7. JEFF is a citizen of the State of Illinois and a resident of DuPage County, Illinois.

8. MARGARET is Jeff's wife and a citizen of the State of Illinois and a resident of DuPage County, Illinois.

9. PPS is an Illinois Corporation, is a citizen of the State of Illinois, and has its principal place of business in Illinois.

10. JIM is a citizen of the State of Illinois and resides in Kane County, Illinois.

11. AMY is Jim's wife, and is a citizen of the State of Illinois and resides in Kane County, Illinois.

12. INTERNATIONAL is an Illinois Corporation, is a citizen of the State of Illinois and has its principal place of business in Kane County, Illinois.

13. Defendant, INDIANAPOLIS is now a part of Aviva Life and Annuity Company, organized and existing pursuant to the laws of the State of Iowa, is a citizen of the state of Iowa, and has its principal place of business at 611 5th Avenue, Des Moines, IA 50309.

JURISDICTION AND VENUE

14. This Court has personal jurisdiction over Defendant because it has systematic and continuous contacts with Illinois. Additionally, as alleged below, Plaintiffs' claims arise directly

out of Defendant's contacts with Illinois and conduct within the State of Illinois. This Court also has personal jurisdiction over each of the Defendants pursuant to Section 1965(b) of RICO, 18 U.S.C. § 1965(b).

15. Jurisdiction is appropriate in this Court under 28 U.S.C. § 1332 (as amended), the Class Action Fairness Act and Rule 23 of this Federal Rules of Civil Procedure as well as subject matter jurisdiction over Counts I through IV pursuant to 28 U.S.C. § 1331, because those counts arise under RICO. This Court also has subject matter jurisdiction over Counts V through X pursuant to 28 U.S.C. § 1367, because those claims are so related to Counts I through IV that they form part of the same case or controversy.

16. Venue is proper in this District as the conduct of INDIANAPOLIS complained of herein occurred in this District as to the named Plaintiffs.

FACTUAL BACKGROUND

17. Upon information and belief, INDIANAPOLIS marketed through its agents, "specifically designed" life insurance policies for use in "tax reduction plans," targeting high income individuals, including, but not limited to, the named Plaintiffs.

18. Upon information and belief, INDIANAPOLIS through its agents marketed the Plans and its life insurance policies as a means of reducing tax liability and protecting financial assets.

19. Upon information and belief, INDIANAPOLIS' representations regarding "specifically designed" life insurance policies to obtain tax deductions and tax free retirement income, among other tax benefits, were made falsely and fraudulently.

20. Alternatively, upon information and belief, the representations regarding INDIANAPOLIS' "specifically designed" life insurance policies to obtain tax deductions and tax

free retirement income, among other tax benefits, were made without knowledge or recklessly about the truth of the alleged tax benefits.

21. Upon information and belief, INDIANAPOLIS created and sold through its agents life insurance policies by means of uniformly false and misleading advertising and sales presentations, premium and benefit illustrations, and other marketing materials to induce high income individuals, including Plaintiffs, and those they seek to represent, to purchase the policies upon representations of receiving financial and tax benefits.

22. These false and misleading advertising and sales presentations, premium and benefit illustrations, and other marketing materials were prepared and disseminated directly by INDIANAPOLIS and/or its agents using the U.S. mails or wires in interstate commerce and induced Plaintiffs and those they seek to represent to purchase INDIANAPOLIS life insurance policies.

23. INDIANAPOLIS had direct supervisory control over all information concerning its policies disseminated by its agents for purposes of inducing the named Plaintiffs and those they seek to represent to purchase the life insurance policies to obtain the represented benefits.

Facts specific as to Plaintiffs Jeff Paul, Margaret Paul, and PPS.

24. In December, 2002, JEFF, MARGARET, and PPS met with INDIANAPOLIS' agent Melvin Abrams¹ and were assured they could legally shelter \$500,000 dollars of their income "tax free" through the purchase of INDIANAPOLIS' life insurance policies.

25. In accordance with INDIANAPOLIS' program and marketing strategy, JEFF and

¹ Plaintiffs JEFF and MARGARET have filed a State Court action against Abrams in the Circuit Court of Cook County, Illinois, case 08 L 014442, for his conduct. INDIANANPOLIS is not named as a Defendant in that case and to the extent any recovery is made in that lawsuit, the appropriate credit will be given to INDIANAPOLIS in the event of a successful Plaintiffs' recovery in this lawsuit.

MARGARET were to:

- a. establish the 419 Plan described in paragraph 2, *supra*, to purchase two specifically designed INDIANAPOLIS life insurance policies, one on MARGARET's life and the other on JEFF's life, with each policy naming the 419 Plan as the beneficiary thereof;
- b. to fund the 419 Plan's purchase of the life insurance policies, each year for five consecutive years, Plaintiffs JEFF and MARGARET's closely held corporation PPS would contribute into the 419 Plan approximately \$100,000 (i.e., the annual premiums) and fully deduct each of these payments ("dollar for dollar") as a tax-deductible business expense on its corporate tax return, the 419 Plan administrators would then tender these funds to INDIANAPOLIS and after five years the policies would be fully funded, requiring no additional premium payments;
- c. during the first five years, notwithstanding the substantial annual premiums PPS paid in (approximately \$500,000), the two policies projected cash surrender value would grow disproportionately in very small amounts but then for the next five years the two policies' cash surrender value would grow in larger increments, sometimes referred to as "springing cash value whole life insurance;"
- d. after the fifth year, PPS would terminate the 419 Plan and the respective policies would be distributed outright to the PAULS personally, who then, for federal income tax purposes, would be subject to recognize as income

only \$102,883, a very low cash surrender on the PAULS' two policies and pay a one-time disproportionately low income tax;

- e. during the years subsequent to the transfer of ownership of the policies, the cash surrender values of the policies would grow at larger increments than they had during the first five years, without any income tax ramifications, and thereafter the PAULS could personally withdraw funds comprising the built up cash values at any time after the 10th year, entirely "tax free".

26. INDIANAPOLIS' marketing assured JEFF and MARGARET the program leading to the purchase of the INDIANAPOLIS policies was entirely legal, in full compliance with US tax laws, and safe from scrutiny and disallowance or disqualification by the IRS with no risk of adverse tax consequences to these Plaintiffs.

27. On or about December 31, 2002, in reliance upon INDIANAPOLIS' representations and assurances that the 419 Plan presented and the related contributions made to fund the purchase of the subject INDIANAPOLIS insurance policies would be fully tax deductible to PPS, of substantial future tax benefit to JEFF and MARGARET personally, and most importantly, in full compliance with US tax laws, MARGARET, on behalf of PPS as employer, executed the plan documents thereby adopting and being bound to an employee pension plan purportedly legal under IRS code section 419, entitled the "PPS Advertising, Inc. Welfare Benefit Plan – National Benefit Trust II" (*the PPS 419 Plan*) and PPS contributed \$100,000 to the plan administrators to cover the anticipated first year insurance premium payments.

28. In April 2003 JEFF and MARGARET applied to INDIANAPOLIS which then issued

two life insurance policies to *the PPS 419 Plan* (as owner thereof), respectively, on the lives of MARGARET and JEFF. These policies carried a five-year annual premium which, including additional annual plan administration fees, amounted to \$48,000 for MARGARET'S policy and \$51,000 for JEFF's (approximately \$101,000 combined).

29. For five years, 2002 through 2006, PPS annually contributed approximately \$101,000 in premiums and administration fees to *the PPS 419 Plan* for the plan administrators to pay for the INDIANAPOLIS policies and plan administration and accordingly deducted each annual contribution (approximately \$505,000 in total) on its US corporate tax returns.

30. In June 2007, the IRS informed JEFF and MARGARET that it placed their participation in *the PPS 419 Plan* under direct audit examination as violating US tax laws and the PAULS were caused to expend substantial sums of money for professional fees in responding thereto.

31. On April 15, 2008, upon completion of its examination, the IRS informed Plaintiffs JEFF and MARGARET that *the PPS 419 Plan* INDIANAPOLIS promoted was invalid, failed to meet the requirements of a Section 419 welfare benefit plan, and moreover was merely a non-qualified deferred compensation plan in disguise, wholly contrary to US tax laws.

32. Consequently, the IRS informed the PAULS that it not only disqualified the related deductions taken by PPS in connection with the INDIANAPOLIS policies, but also assessed the PAULS with back taxes, penalties and imposed interest continuing to accrue through the present.

33. By virtue of the IRS' disqualification and denial of PPS' premium payment deductions for the INDIANAPOLIS policies and resultant tax deficiency assessment, the significant "springing cash value" benefit INDIANAPOLIS promoted was rendered completely meaningless, and instead simply resulted in the PAULS wasting substantial monies merely to

buy overly expensive, unnecessary and horribly unsuitable life insurance investments having minimal cash surrender values which were more expensive than other comparable products on the market.

34. But for INDIANAPOLIS' marketing and representations extolling the tax-saving and investment benefits of adopting the 419 Plan and the premium deductibility and springing cash value aspects of the INDIANAPOLIS' policies, the PAULS would never have considered such an undertaking, and certainly not have invested in the subject life policies.

Facts specific as to Plaintiffs Jim Fleck, Amy Fleck, and International.

35. In or about December 2004, JIM, AMY and INTERNATIONAL met with INDIANAPOLIS' agent Melvin Abrams and were assured they could legally shelter approximately \$500,000 dollars of their income "tax free" through the purchase of INDIANAPOLIS' life insurance policies.

36. In accordance with INDIANAPOLIS' program and marketing strategy, JIM and AMY were to:

- a. establish the 419 Plan described in paragraph 2, *supra*, to purchase two specifically designed INDIANAPOLIS life insurance policies, one on AMY's life and the other on JIM's life, with each policy naming the 419 Plan as the beneficiary thereof;
- b. to fund the 419 Plan's purchase of the life insurance policies, each year for five consecutive years Plaintiffs JIM and AMY's closely held corporation INTERNATIONAL would contribute into the 419 Plan approximately \$100,000 (i.e., the annual premiums) and fully deduct each of these payments

(“dollar for dollar”) as a tax-deductible business expense on its corporate tax return. The 419 Plan administrators would then tender these funds to INDIANAPOLIS and after five years the policies would be fully funded, requiring no additional premium payments;

- c. during the first five years, notwithstanding the substantial annual premiums INTERNATIONAL would have paid in (approximately \$500,000), the two policies projected cash surrender value would grow disproportionately in very small amount but then for the next five years the two policies’ cash surrender value would grow in larger increments, sometimes referred to as “springing cash value whole life insurance”;
- d. after the fifth year, INTERNTIONAL would terminate the 419 Plan and the respective policies would be distributed outright to the FLECKS personally, who then, for federal income tax purposes, would be subject to recognize as income only of approximately \$100,000 the very low cash surrender on the FLECKs’ two policies and pay a one-time disproportionately low income tax;
- e. during the years subsequent to the transfer of ownership of the policies, the cash surrender values of the policies would grow at larger increments than they had during the first five years, without any income tax ramifications, and thereafter the FLECKS could personally withdraw funds comprising the built up cash values at any time after the 10th year, entirely “tax free”.

37. INDIANAPOLIS’ marketing assured JIM and AMY the program leading to the purchase of the INDIANAPOLIS policies was entirely legal, in full compliance with US tax laws, and safe

from scrutiny and disallowance or disqualification by the IRS with no risk of adverse tax consequences to these Plaintiffs.

38. On or about December 31, 2004, in reliance upon INDIANAPOLIS' representations and assurances that the 419 Plan presented and the related contributions made to fund the purchase of the subject INDIANAPOLIS insurance policies would be fully tax deductible to INTERNATIONAL, of substantial future tax benefit to JIM and AMY personally, and most importantly, in full compliance with US tax laws, AMY, on behalf of INTERNATIONAL as employer, executed the plan documents thereby adopting and being bound to an employee pension plan purportedly legal under IRS code section 419, entitled the "INTERNATIONAL PROFIT INC. Welfare Benefit Plan – National Benefit Trust II" (*the INTERNATIONAL 419 Plan*) and INTERNATIONAL contributed \$100,000 to the plan administrators to cover the anticipated first year insurance premium payments.

39. In 2005, JIM and AMY applied to INDIANAPOLIS which then issued two life insurance policies to *the INTERNATIONAL 419 Plan* (as owner thereof), respectively, on the lives of AMY and JIM. These policies carried a five-year annual premium which, including additional annual plan administration fees, amounting to \$48,000 for AMY'S policy and \$51,000 for JIM's (approximately \$101,000 combined).

40. For three years, 2004 through 2007, INTERNATIONAL annually contributed approximately \$101,000 in premiums and administration fees to *the INTERNATIONAL 419 Plan* for the plan administrators to pay for the INDIANAPOLIS policies and plan administration and accordingly deducted each annual contribution (approximately \$300,000 in total) on its US corporate tax returns.

41. In 2008, the IRS informed JIM and AMY that it placed their participation in *the INTERNATIONAL 419 Plan* under direct audit examination as violating US tax laws and the FLECKS were caused to expend substantial sums of money for professional fees in responding thereto.

42. Upon completion of its examination, the IRS informed Plaintiffs that *the INTERNATIONAL 419 Plan* that INDIANAPOLIS promoted was invalid, failed to meet the requirements of Section 419 welfare benefit plan, and moreover was merely a non-qualified deferred compensation plan in disguise, wholly contrary to US tax laws.

43. Consequently, the IRS informed the FLECKS that it not only disqualified the related deductions taken by INTERNATIONAL in connection with the INDIANAPOLIS policies, but also assessed the FLECKS with back taxes, penalties and imposed interest upon them.

44. By virtue of the IRS' disqualification and denial of INTERNATIONAL'S premium payment deductions for the INDIANAPOLIS policies and resultant tax deficiency assessment, the significant "springing cash value" benefit INDIANAPOLIS promoted was rendered completely meaningless, and instead simply resulted in the FLECKS wasting substantial monies merely to buy overly expensive, unnecessary and horribly unsuitable life insurance investments having minimal cash surrender values which were more expensive than other comparable products on the market.

45. But for INDIANAPOLIS' marketing and representations extolling the tax-saving and investment benefits of adopting the 419 Plan and the premium deductibility and springing cash value aspects of the INDIANAPOLIS policies, the FLECKS would never have considered such an undertaking, and certainly not have invested in the subject life policies

Further conduct of INDIANAPOLIS as to all Plaintiffs.

46. INDIANAPOLIS marketed its policies as an appropriate financial vehicle to accumulate substantial tax-advantage retirement savings. INDIANAPOLIS represented its plan and policies were suitable for retirement savings since they could allow income to be withdrawn in the future by the owner in the form of tax exempt policy loans, while allowing the current cost for the insurance to be deducted by the business from federal income taxes when used with the 419 Plan.

47. INDIANAPOLIS is responsible for the creation of the fraudulent marketing materials to sell its policies at an exorbitant cost to Plaintiffs and those they seek to represent

48. INDIANAPOLIS represented in writing, through letters and marketing materials to Plaintiffs and those they seek to represent, that its policies were special insurance policies that were “specifically designed” for funding the particular type of employee benefit plan arrangement described in 26 U.S.C. § 419.

49. INDIANAPOLIS claimed that Plaintiffs and those they seek to represent could use the Plan to take tax deductions for the premium contributions paid to INDIANAPOLIS and that Plaintiffs would be able to earn significant cash build up of tax free retirement income because its policy would provide for post-conversion income in the form of tax free policy loans from Plaintiffs’ insurance policies.

50. INDIANAPOLIS knew and understood, but intentionally or recklessly failed to disclose, that in order to obtain legal classification as the type of employee benefit represented, full compliance with the non-discrimination rules set out in the Internal Revenue Code was, and is, mandatory in order to ensure that the true purpose of the Plan to provide actual benefits to

employees. Since the undisclosed, operational effect of the INDIANAPOLIS policies is designed to deliberately cause a discriminatory compensation benefit in favor of one class of employees to the exclusion of others, the policies could never lawfully provide business owner Plaintiffs benefits without risk of significant adverse tax penalties.

51. INDIANAPOLIS knew, but never disclosed, that many aspects of its scheme violated the concept of nondiscriminatory welfare benefits.

52. INDIANAPOLIS knew its insurance product was not suitable for the purposes represented because it violated applicable tax laws regarding modified endowment contracts, violated the incidental benefit rules, and resulted in listed transactions for tax purposes.

53. INDIANAPOLIS knew, but failed to disclose to Plaintiffs and those they seek to represent, these facts which, if disclosed, would have allowed Plaintiffs and those they seek to represent to understand that the hypothetical loans referenced in the presentations could not possibly be income tax free and that the policy loans would not qualify for tax free life insurance treatment.

54. If INDIANAPOLIS had revealed to Plaintiffs and those they seek to represent the true nature of the life insurance contract, it would have become known its policies were nothing more than insurance with an individual savings account, whose account was built up from paying huge premiums, far in excess of that required to pay for the real cost of such insurance.

55. INDIANAPOLIS represented that contributions to the life insurance contracts was allowed and legal, that the contributions to the employee benefit plans were fully deductible to Plaintiffs and those they seek to represent and that the program, the favorable tax treatment under the 419 Plan, the legal accumulation of a huge future cash value, would provide Plaintiffs and

those they seek to represent with the life insurance needed and would allow Plaintiffs to accrue significant retirement funds.

56. Upon information and belief, in advising Plaintiffs and those they seek to represent, INDIANAPOLIS, through its agents directly and indirectly, and acting in concert with others, engaged in acts and practices, made numerous misrepresentations and omissions of material facts to Plaintiffs and those they seek to represent at numerous times, prior to Plaintiffs and those they seek to represent creating a 419 Plan and continuing thereafter, which operated to cause them substantial losses.

57. Plaintiffs are informed and believe, and based thereon, allege that INDIANAPOLIS directly and indirectly, individually and acting in concert with their agents in violation of their fiduciary duties owed to Plaintiffs and those they seek to represent, omitted to state numerous material facts or dealt with the funds of Plaintiffs' and those they seek to represent as if its own, which operated to defraud and deceive Plaintiffs and those they seek to represent for the purpose of inducing Plaintiffs and those they seek to represent to continue their payments to INDIANAPOLIS for the life insurance policies.

58. Material facts omitted by INDIANAPOLIS include among others, the following:

- a. that payment of life insurance premiums for life insurance policies with income of Plaintiffs and those they seek to represent through an employee benefit plan would not result in additional income tax liability, when, in contrast, Plaintiffs and those they seek to represent have become aware of and are placed at risk of proceedings by the IRS;
- b. that at all relevant times, INDIANAPOLIS was on notice of tax court litigation

issues and IRS positions, and intentionally failed to notify employers and employees involved in using 419 Plans to fund the purchase of INDIANAPOLIS life insurance policies which failure to notify permitted INDIANAPOLIS to induce Plaintiffs and those they seek to represent to participate in Defendant's program before and after the beginning of such litigation, resulting in the potential for loss of tax deductions, assessment of tax penalties and interest;

- c. by inducing Plaintiffs and those they seek to represent, INDIANAPOLIS and its agents, directly and indirectly, acting in concert, and in violation of their fiduciary duties owed to Plaintiffs and those they seek to represent, engaged in acts and practices, made numerous misrepresentations and omitted to state relevant material facts to Plaintiffs and those they seek to represent as to the use of the recommended 419 plan, to purchase INDIANAPOLIS Life insurance and about the guarantees under the life insurance policies, their self-funding in and after year five, and their cash value, all of which operated to defraud and deceive Plaintiffs and those they seek to represent for the purpose of inducing purchase of INDIANAPOLIS policies;
- d. that the purchase of the policies by Plaintiffs and those they seek to represent was a non-exempt prohibited transaction as defined in 29 USC § 1106.

CLASS ALLEGATIONS

59. Pursuant to 28 U.S.C. § 1332 and Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of a class of similarly situated persons injured by INDIANAPOLIS' unfair and deceptive practices. The class is defined as follows:

“All individuals or corporations who purchased or caused to be purchased INDIANAPOLIS life insurance policies with ‘springing cash values’ after five years pursuant to a 419 plan promoted by INDIANAPOLIS Life”.

60. The Class members are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, it is ascertainable through appropriate discovery. Plaintiffs believe that hundreds if not thousands have been victimized by INDIANAPOLIS’ unfair and deceptive practices during the relevant period.

61. Questions of law and fact are common to the Class and these common questions predominate over any questions affecting individual members.

62. Plaintiffs will fairly and adequately protect the interest of the Class.

63. Plaintiffs’ counsel are experienced class-action attorneys.

64. A class-action is an appropriate method for the fair and efficient adjudication of the dispute.

COUNT 1 – RICO, SECTION 1962(c)

65. For paragraph 65 of Count I, Plaintiff adopts and incorporates paragraphs 1 through 64 by reference, as if the same were fully set forth herein.

66. Defendant has engaged in a pattern of racketeering activity, consisting of numerous predicate acts of wire and mail fraud in violation of 18 U.S.C. § 1341 and § 1343, all of which acts were in furtherance of the enterprise of INDIANAPOLIS including, but not limited to, the establishment of a 419 Plan coupled with the sale of its life insurance policies, hereinafter collectively referred to as the establishment of a “419 enterprise” which enterprise was engaged in interstate or foreign commerce and which activity affects interstate or foreign commerce.

67. Defendant made the following false representations or omissions of material fact to

Plaintiffs and those they seek to represent:

- a. that payment of the life insurance premiums for INDIANAPOLIS' life insurance policies with income of Plaintiffs' closely held corporations through an employee benefit plan insuring Plaintiffs and those they seek to represent would not result in additional income tax liability, when, in contrast, Plaintiffs and those they seek to represent have become aware of and are placed at risk of proceedings by the IRS;
- b. that at all relevant times, INDIANAPOLIS was on notice of tax court litigation issues and IRS positions as to the 419 enterprise, and intentionally failed to notify employers and employees involved in using 419 plans to purchase INDIANAPOLIS life insurance policies of the IRS claims concerning the type of scheme INDIANAPOLIS concocted before and after the beginning of such IRS litigation, which litigation could significantly impact and damage Plaintiffs and those they seek to represent related to the potential for loss of tax deductions, assessment of tax penalties and interest;
- c. by inducing Plaintiffs and those they seek to represent, INDIANAPOLIS and its agents, directly and indirectly, acting in concert, and in violation of their fiduciary duties owed to Plaintiffs and those they seek to represent, engaged in acts and practices, made numerous misrepresentations and omitted to state material facts relevant to Plaintiffs and those they seek to represent about the guarantees under the life insurance policies, their self-funding in and after year five, and their cash value, all of which operated to defraud and deceive Plaintiffs and those they seek to represent for the purpose of inducing purchase of INDIANAPOLIS policies;
- d. that the purchase of the policies by Plaintiffs and those they seek to represent was a

non-exempt prohibited transaction as defined in 29 USC § 1106.

68. Each of the misrepresentations in the preceding paragraph are material. Had Plaintiffs and those they seek to represent known the truth, they never would have purchased the policies they did.

69. INDIANAPOLIS knew that each of the above misrepresentations were false at the time it made each misrepresentation.

70. INDIANAPOLIS intended that each of the above misrepresentations induce Plaintiffs and those they seek to represent to purchase its policies of insurance.

71. Plaintiffs and those they seek to represent reasonably relied on INDIANAPOLIS' misrepresentations as being true. As a direct and proximate result of INDIANAPOLIS' misrepresentations, Plaintiffs and those they seek to represent caused INDIANAPOLIS life insurance policies to be purchased.

72. Plaintiffs and those they seek to represent have incurred injury as a direct and proximate result of their reliance on INDIANAPOLIS' misrepresentations and Plaintiffs and those they seek to represent have lost millions of dollars in investment capital.

73. But for the acts and lies of INDIANAPOLIS' aforesaid, violations of §1962(c), Plaintiffs and those they seek to represent would not have suffered the loss they have: all of which were the logical consequence of INDIANAPOLIS' conduct.

74. INDIANAPOLIS used the United States wires and mail to further implement the aforesaid lies, scheme, and unauthorized transactions in violation of 18 U.S.C. § 1341 and § 1343.

75. Plaintiffs and those they seek to represent have been injured as a result of

INDIANAPOLIS' use and investment of racketeering proceeds. As a direct and proximate result of INDIANAPOLIS' conduct, Plaintiffs and those they seek to represent purchased INDIANAPOLIS' policies and have sustained losses in the millions of dollars.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent three times the damages they sustained, in accordance with 18 U.S.C. § 1964(c), in an amount to be determined at trial; (3) award Plaintiffs and those they seek to represent their costs, including reasonable attorneys' fees, in accordance with 18 U.S.C. § 1962(c); (4) award Plaintiffs and those they seek to represent pretrial interest in an amount to be determined at trial; and (5) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary or appropriate.

COUNT II: RICO, SECTION 1962(b)

76. For paragraph 76 of Count II, Plaintiffs adopt and incorporate paragraphs 1 through 64 by reference, as if the same were fully set forth herein. Plaintiffs further adopt and incorporate paragraphs 65 through 75 of Count I, as if the same were fully set forth herein

77. Defendant acquired and maintained an interest in the assets of Plaintiffs and those they seek to represent through its pattern of racketeering activity as aforesaid, in violation of 18 U.S.C. § 1962(b) and therefore acquired an interest in and maintained control over the 419 enterprise.

78. Defendant is engaged in interstate or foreign commerce, and its activities affect interstate or foreign commerce.

79. Plaintiffs and those they seek to represent have been injured as a direct, proximate, and

foreseeable result of Defendant's pattern of racketeering activity to acquire and maintain an interest and control over the 419 enterprise. The exact amount of injuries to Plaintiffs' and those they seek to represent are to be determined at trial, but is in the millions of dollars.

80. INDIANAPOLIS used the above misrepresentations to maintain control over moneys and funds owned by Plaintiffs and those they seek to represent, in violation of 18 U.S.C. § 1344. Specifically, as a direct and proximate result of reliance by Plaintiffs' and those they seek to represent on INDIANAPOLIS' misrepresentations, Defendant was able to receive outrageously high premium payments from Plaintiffs and those they seek to represent.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent three times the damages they sustained, in accordance with 18 U.S.C. § 1964(c), in an amount to be determined at trial; (3) award Plaintiffs and those they seek to represent their costs, including reasonable attorneys' fees, in accordance with 18 U.S.C. § 1962(c); (4) award Plaintiffs and those they seek to represent pretrial interest in an amount to be determined at trial; and (5) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary or appropriate.

COUNT III: RICO, SECTION 1962(a)

81. For paragraph 81 of Count III, Plaintiffs adopt and incorporate paragraphs 1 through 75 by reference, as if the same were fully set forth herein. Plaintiffs further adopt and incorporate paragraphs 76 through 80 of Count II, as if the same were fully set forth herein.

82. As stated, Defendant exercised a managerial position and control over the 419 enterprise.

83. INDIANAPOLIS used the proceeds derived from the aforesaid acts and lies, and pattern

of racketeering activity, to invest, directly or indirectly, in the acquisition of interests in establishment or operation of the business enterprises of INDIANAPOLIS in violation of 18 U.S.C. § 1962(a), including, but not limited to the 419 enterprise and its other investments: all of which enterprises are engaged in interstate or foreign commerce, and which activities affect interstate or foreign commerce.

84. INDIANAPOLIS invested the proceeds realized from the 419 enterprise.

85. Plaintiffs have been injured as a result of Defendant's use and investment of racketeering proceeds. As a direct and proximate result of Defendant's conduct, Plaintiffs and those they seek to represent have sustained losses in the millions of dollars.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action case; (2) award Plaintiffs and those they seek to represent three times the damages they sustained, in accordance with 18 U.S.C. § 1964(c), in an amount to be determined at trial; (3) award Plaintiffs and those they seek to represent their costs, including reasonable attorneys' fees, in accordance with 18 U.S.C. § 1962(c); (4) award Plaintiffs and those they seek to represent pretrial interest in an amount to be determined at trial; and (5) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary or appropriate.

COUNT IV: RICO CONSPIRACY, SECTION 1962(d)

86. For paragraph 86 of Count IV, Plaintiffs adopt and incorporate paragraphs 1 through 80 by reference, as if the same were fully set forth herein. Plaintiffs further adopt and incorporate paragraphs 81 through 85 of Count III, as if the same were fully set forth herein.

87. Defendant with its agents joined in a conspiracy whose goal was the commission of the

predicate acts of fraud alleged in paragraphs 67 through 71 of Count I.

88. Defendant knew that the predicate acts of fraud alleged in paragraphs 65 through 71 of Count I were part of a pattern of racketeering activity conducted in such a way as to violate sections 1962(a), (b), and (c) of RICO.

89. Plaintiffs and those they seek to represent have been injured as a result of the overt acts committed by Defendant in furtherance of the conspiracy. As a direct and proximate result of Defendant's overt material misrepresentations to Plaintiffs and those they seek to represent, and the consequent fraudulent investment transactions, Plaintiffs and those they seek to represent have lost millions of dollars in investment capital. The precise amount of damages to Plaintiffs and those they seek to represent are to be determined at trial.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent three times the damages they sustained, in accordance with 18 U.S.C. § 1964(c), in an amount to be determined at trial; (3) award Plaintiffs and those they seek to represent their costs, including reasonable attorneys' fees, in accordance with 18 U.S.C. § 1962(c); (4) award Plaintiffs and those they seek to represent pretrial interest in an amount to be determined at trial; and (5) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary or appropriate.

COUNT V: INTENTIONAL MISREPRESENTATION

90. For paragraph 90 of Count V, Plaintiffs adopt and incorporate paragraphs 1 through 85 by reference, as if the same were fully set forth herein. Plaintiffs further adopt and incorporate paragraphs 86 through 89 of Count IV, as if the same were fully set forth herein.

91. Defendant knew that each of the misrepresentations alleged in paragraphs 65 through 71 of Count I were false at the time that the Defendant made each misrepresentation.

92. Defendant intended that each of the misrepresentations alleged in paragraphs 65 through 71 of Count I induce Plaintiffs and all those the seek to represent to purchase its life insurance policies.

93. Plaintiffs and those they seek to represent relied on Defendant's misrepresentations. As a direct and proximate result of Defendant's misrepresentations, Plaintiffs and those they seek to represent purchased the INDIANAPOLIS life insurance policies they did.

94. Plaintiffs and those they seek to represent have incurred damages as a result of their reliance on Defendant's misrepresentations. As a direct and proximate result of Defendant's misrepresentations, Plaintiffs and those they seek to represent have lost millions of dollars in investment capital. The precise amount of damages to Plaintiffs and those they seek to represent is to be determined at trial.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent compensatory and punitive damages in an amount to be determined at trial; (3) award Plaintiffs and those they seek to represent their costs, including reasonable attorneys' fees; (4) award Plaintiffs and those they seek to represent pretrial interest in an amount to be determined at trial; and (5) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary or appropriate.

COUNT VI: NEGLIGENT MISREPRESENTATION

95. For paragraph 95 of Count VI, Plaintiffs adopt and incorporate paragraphs 1 through 89

by reference, as if the same were fully set forth herein. Plaintiffs further adopt and incorporate paragraphs 90 through 94 of Count V, as if the same were fully set forth herein.

96. Defendant had a duty to communicate accurate information to Plaintiffs and those they seek to represent. It is in the business of supplying information for the guidance of others in their transactions. Plaintiffs and those they seek to represent specifically sought and relied upon the information and guidance provided by Defendant. Moreover, Plaintiffs and those they seek to represent specifically sought and relied upon the guidance of Defendant in connection with the 419 enterprise and its tax savings. Defendant repeatedly encouraged Plaintiffs and those they seek to represent to proceed with the transactions, advising them that the 419 enterprise would be in their interest: all misrepresentations. Specifically, INDIANAPOLIS represented that the 419 enterprise would result in substantial tax savings.

97. Defendant made false statements or omissions of material fact set forth in paragraph 67 of Count I.

98. Defendant was careless or negligent in ascertaining the truth of each of the statements alleged in paragraph 67 of Count I.

99. Defendant intended that each of the misrepresentations alleged in paragraph 67 of Count I induce Plaintiffs and those they seek to represent to purchase its life insurance policies.

100. Plaintiffs and those they seek to represent relied on the misrepresentations of Defendant and as a direct and proximate result of the misrepresentations, Plaintiffs and those they seek to represent purchased Defendant's life insurance policies.

101. Plaintiffs and those they seek to represent have incurred damages as a result of their reliance on Defendant's misrepresentations. As a direct and proximate result of Defendant's

misrepresentations, Plaintiffs and those they seek to represent have lost millions of dollars in investment capital.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) rescind any and all outstanding obligations of Plaintiffs and those they seek to represent; (3) award Plaintiffs and those they seek to represent their costs, including reasonable attorneys' fees; (4) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary or appropriate.

COUNT VII: FRAUDULENT CONCEALMENT

102. For paragraph 102 of Count VII, Plaintiffs adopt and incorporate paragraphs 1 through 94 by reference, as if the same were fully set forth herein. Plaintiffs further adopt and incorporate paragraphs 95 through 101 of Count VI, as if the same were fully set forth herein.

103. Defendant has concealed and omitted the following material facts from Plaintiffs and those they seek to represent:

- a. that payment of the life insurance premiums for the life insurance policies with income of Plaintiffs and those they seek to represent through an employee benefit plan insuring the Plaintiffs and those they seek to represent would not result in additional income tax liability, when, in contrast, the Plaintiffs and those they seek to represent have become aware of and are placed at risk of proceedings by the IRS;
- b. that at all relevant times, INDIANAPOLIS was on notice of tax court litigation issues and IRS positions, and intentionally failed to notify employers and employees involved in using the 419 plans to fund purchase of INDIANAPOLIS' life insurance policies of the IRS claims concerning the type of plans before and after the beginning

- of such IRS litigation, which could significantly impact and damage Plaintiffs and those they seek to represent related to the potential for loss of tax deductions, assessment of tax penalties and interest;
- c. by inducing Plaintiffs and those they seek to represent, INDIANAPOLIS and its agents, directly and indirectly, acting in concert, and in violation of their fiduciary duties owed to Plaintiffs and those they seek to represent, engaged in acts and practices, made numerous misrepresentations and omitted to state material facts relevant to Plaintiffs and those they seek to represent about the guarantees under the subject life insurance policies, their self-funding in and after year five, and their cash value, which operated to defraud and deceive Plaintiffs and those they seek to represent, and that said acts were done for the purpose of inducing purchase of INDIANAPOLIS policies;
 - d. that the purchase of the policies by Plaintiffs and those they seek to represent were a non-exempt prohibited transaction as defined in 29 USC § 1106.

104. Defendant had knowledge that it omitted and concealed the aforesaid acts.

105. At the time Defendant was omitting and concealing this, Defendant had a duty to disclose each of the facts that were omitted and concealed. The omissions and concealment were carried out under circumstances creating an opportunity and duty to speak. By failing to disclose material facts known to it at the time, it was making other statements and representations to Plaintiffs and those they seek to represent to induce them to purchase its life insurance policies. Defendant presented half-truths that were more misleading than outright lies. Under these circumstances, Defendant had a duty to disclose the material facts known to it.

106. Additionally, INDIANAPOLIS, a life insurance company, had a duty to disclose to Plaintiffs and those they seek to represent any material risks that were known to it but unknown to Plaintiffs and those they seek to represent.

107. Moreover, Defendant had a fiduciary duty to disclose each of the facts it has omitted and concealed. Defendant had a fiduciary duty to speak. The allegations underlying defendant's fiduciary obligations are further set forth in Counts VIII and are adopted and incorporated by reference as if the same were fully set forth herein.

108. Defendant intended that each of its omissions and concealment alleged in this Count induce Plaintiffs and those they seek to represent to purchase its life insurance policies.

109. Plaintiffs and those they seek to represent relied on Defendant's omissions and concealment. As a direct and proximate result of Defendant's omissions and concealment, Plaintiffs and those they seek to represent purchased INDIANAPOLIS' life insurance policies.

110. Plaintiffs and those they seek to represent have incurred damages as a result of their reliance on Defendants' omissions and concealment. As a direct and proximate result of Defendant's omissions and concealment, Plaintiffs and those they seek to represent have lost millions of dollars.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent compensatory and punitive damages, in an amount to be determined at trial; (3) award Plaintiffs and those they seek to represent their costs, including reasonable attorneys' fees; (4) award Plaintiffs and those they seek to represent pretrial interest in an amount to be determined at trial; and (5) grant Plaintiffs and those they seek to represent such other and further relief as the Court

deems necessary or appropriate.

COUNT VIII: BREACH OF FIDUCIARY DUTY

111. For paragraph 111 of Count VIII, Plaintiffs adopt and incorporate paragraphs 1 through 101 by reference, as if the same were fully set forth herein. Plaintiffs further adopt and incorporate paragraphs 102 through 110 of Count VII, as if the same were fully set forth herein.

112. Defendant breached its fiduciary duties to Plaintiffs and those they seek to represent in several ways. First, made the misrepresentations set forth in paragraph 67 of Count I.

113. Second, Defendant omitted and concealed the material facts set forth in paragraph 103 of Count VII.

114. Defendant redirected funds provided by Plaintiffs and those they seek to represent for new investments.

115. Fourth, Defendant intentionally misrepresented the tax consequences of the 419 enterprise.

116. Sixth, Defendant failed to provide accurate and truthful information to Plaintiffs and those they seek to represent.

117. Each of the acts set forth in this Count is a separate breach of Defendant's fiduciary duties.

118. As a direct and proximate result of Defendant's breaches, Plaintiffs and those they seek to represent have suffered injuries in an amount to be determined at trial, in the millions of dollars.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this

Court: (1) certify this case as a class action; (2) award Plaintiffs and those they seek to represent compensatory and punitive damages in an amount to be determined at trial; (3) award Plaintiffs and those they seek to represent their costs, including reasonable attorneys' fees; (4) award Plaintiffs and those they seek to represent pretrial interest in an amount to be determined at trial; and (5) grant Plaintiffs and those they seek to represent such other and further relief as the Court deems necessary or appropriate.

COUNT IX: CIVIL CONSPIRACY

119. For paragraph 119 of Count IX, Plaintiffs adopt and incorporate paragraphs 1 through 118 by reference, as if the same were fully set forth herein.

120. Defendant agreed with its agents to participate in a common scheme to use unlawful means including but not limited to the misrepresentations, omissions, and concealment of material facts to induce Plaintiffs and those they seek represent to purchase INDIANAPOLIS life insurance policies.

121. Defendant committed the overt acts alleged in paragraph 67 of Count I, and paragraph 103 of Count VII in furtherance of their common scheme with its agents.

122. As a direct and proximate result of Defendant's common scheme, Plaintiffs and those they seek to represent purchased its life insurance policies.

123. Plaintiffs and those they seek to represent have incurred damages as a direct and proximate result of their reliance on Defendant's misrepresentations. As a direct and proximate result of Defendant's misrepresentations, Plaintiffs and those they seek to represent have lost millions of dollars in investment capital.

WHEREFORE, Plaintiffs respectfully prays that this Court: (1) certify this case as a class

action; (2) hold Defendant jointly and severally liable for its agents' acts in furtherance of the common scheme; (3) award Plaintiffs compensatory and punitive damages in an amount to be determined at trial; (3) award Plaintiffs their costs, including reasonable attorneys' fees; (4) award Plaintiffs pretrial interest in a an amount to be determined at trial; and (5) grant Plaintiffs such other and further relief as the Court deems necessary or appropriate.

COUNT X: ACCOUNTING

124. For paragraph 124 of Count X, Plaintiffs adopt and incorporate paragraphs 1 through 118 by reference, as if the same were fully set forth herein. Plaintiffs further adopt and incorporate paragraphs 119 through 123 of Count IX, as if the same were fully set forth herein.

125. Defendant breached its fiduciary duties to Plaintiffs and those they seek to represent as set forth in paragraph 67 of Count I and paragraphs 112 through 116 of Count VIII.

126. Defendant has committed fraud against Plaintiffs and those they seek to represent, as set forth in paragraph 67 of Count I, and paragraph 103 of Count VII.

127. Plaintiffs and those they seek to represent have need for discovery.

128. The accounts of Defendant are of a complex nature.

129. Plaintiffs and those they seek to represent have no adequate remedy of law, as they cannot determine their monetary damages without inspecting the financial records of Defendant.

WHEREFORE, Plaintiffs and those they seek to represent respectfully pray that this Court grant Plaintiffs and those they seek to represent an accounting for any funds of Plaintiffs' and those they seek to represent wrongfully transferred by Defendant, have Defendant pay for same, and award Plaintiffs and those they seek to represent any damages consistent with such an accounting.

WHEREFORE, Plaintiffs and those they seek to represent pray that the Court:

- a. an accounting to be paid for by Defendant;
- b. enter judgment against INDIANAPOLIS and for Plaintiffs and those they seek to represent in an amount equal to the total losses of Plaintiffs and those they seek to represent;
- c. Award Plaintiffs and those they seek to represent reasonable attorneys' fees;
- d. Grant such additional relief as the Court finds appropriate and just.

Respectfully submitted,

By: s/Arthur S. Gold
One of their counsel

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