

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

VEOLA S. NELSON

PLAINTIFF

V.

CIVIL ACTION NO.5:06 CV DCB/JMR

**AMERUS LIFE INSURANCE COMPANY, INC.,
DAVID M. COMPTON, and
DAVID M. COMPTON, INC.**

DEFENDANTS

COMPLAINT

(JURY TRIAL DEMANDED)

Veola S. Nelson submits the following as her Complaint in this action, of which the District Court has subject matter jurisdiction under 28 United States Code § 1332, by virtue of the complete diversity of citizenship between the Plaintiff and each Defendant herein and the amount in controversy being in excess of \$75,000.00:

1. Plaintiff Veola S. Nelson (“Nelson”) during all times relevant to this action was an adult resident of Yazoo County, Mississippi, and a citizen of the United States.

2. Defendant AmerUs Life Insurance Company, Inc. (“Amerus”) is an insurance company chartered in the State of Iowa, with its principal place of business at 611 Fifth Avenue, Des Moines, Iowa. It may be served through its Mississippi registered agent, Leo J. Jordan, Jr. of 6631 Ahekolo Circle, Diamondhead, Mississippi.

3. Defendant David Michael Compton is, and during all times relevant to this action was, an adult resident of Tickfaw, Louisiana. David Michael Compton is also President and Owner of Defendant David M. Compton, Inc., a Louisiana Corporation also maintaining a principal place of business in Tickfaw, Louisiana. Compton

sometimes operated under the name of “Seniorcorp Services”. Both Mr. Compton individually and his corporation, David M. Compton, Inc., shall be referred to hereafter as “Compton”.

4. During the year 2001 and during all subsequent and relevant times, Compton was an agent of Amerus, having been registered and designated as such with the Louisiana Department of Insurance.

5. By virtue of appointing, designating, and maintaining Compton as its insurance agent, Amerus undertook a legal duty under the common law of negligence to exercise reasonable care to establish, maintain, and enforce (as to its agents including Compton) supervisory and compliance rules and activities in order to detect and prevent illegal insurance practices by Compton and other agents, including the illegal, unfair, and deceptive insurance solicitation practice known commonly as “twisting”, defined as conduct which “misrepresents (facts) to any (insurance) policyholder . . . for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance,” by virtue of both *Louisiana Insurance Code* Title 22 Section 1214(1)(e) and *Mississippi Code Ann.* Section 83-5-35(a). Those statutory definitions of prohibited “twisting” as to life insurance or annuity policies, and insurance regulations including Louisiana Administrative Code Chapter 89, Regulation 70 (titled “Replacement of Life Insurance and Annuities”) and Mississippi Insurance Regulation 99-2 of the Mississippi Department of Insurance (titled “Life Insurance and Annuities Replacement Regulation”), reflect the insurance industry standard of reasonable care applicable under the law of negligence to the conduct of Amerus, such that conduct by Amerus inconsistent with or out of compliance with such regulatory

standards amounts to negligence *per se* in breach of the supervisory and compliance duties of Amerus as principal to Compton with respect to transactions involving Amerus annuity products.

6. By virtue of the statutory, regulatory, and common law requirements to adopt and enforce compliance practices aimed at detecting and deterring twisting practices as described above, and by virtue of insurance laws defining the principal/agency relationship including *Mississippi Code Ann. § 83-17-1*, Amerus served as the principal with respect to its agent Compton as to Compton's solicitation of transactions in or affecting annuity products issued by Amerus, such that Amerus was and is vicariously liable and responsible for damages resulting from twisting activities and other deceptive or otherwise tortious conduct by Compton in the course of such solicitations, including the solicitation activity described below.

7. During 2001, 2002 and 2003, Amerus failed to adopt, maintain, and enforce as to Compton as its agent, reasonably careful supervisory and compliance practices required by the industry standard of care described above for purposes of detecting and deterring twisting practices by Compton and its other agents.

8. During late March of 2001, and again in mid-April of 2001, and again in June of 2001, Compton, acting as an agent of and for Amerus, solicited Nelson at Nelson's home in Yazoo City, Mississippi, and induced Nelson to cancel and surrender an annuity contract with American General Insurance Company (which Nelson had purchased only months before with proceeds Nelson had received from settlement of a personal injury claim), and to purchase instead an annuity from Amerus at a cost to Nelson of over \$500,000.00, which Nelson paid to Amerus

through its agent Compton in June of 2001. The inducements by Amerus through its agent Compton which caused Nelson to cancel and surrender the American General annuity (in order to switch to the Amerus annuity) included the false representation that by doing so Nelson was “guaranteed” to receive more monetary income each month through a higher interest payment, even after the costs of making the switch from American General to Amerus. Those representations were false, constituted unlawful twisting, and materially caused Nelson to make the recommended switch and to incur substantial surrender and commission charges to her detriment (and to the benefit of Amerus and Compton) as a result.

9. During 2003 and 2004, Compton, again through solicitation visits to the Yazoo City, Mississippi home of Nelson and as a agent of (and to the benefit of) Amerus, induced Nelson to cancel and surrender her annuity contract interests with Amerus, and to invest the proceeds from that cancellation in investment contracts termed “twenty-five year universal lease” arrangements with an entity named “Resort Holding International,” purportedly associated with a resort complex in Mexico, and to do so through multiple cancellation transactions with Amerus.

10. In the course of the multiple twisting transactions through which Compton induced Nelson to make that switch, Compton falsely and recklessly represented to Nelson that (a) her investment in the Resort Holding venture would result in a guaranteed annual return on that investment during a twenty-five year period, (b) Resort Holding or its related entities would buy back her investment at her full purchase price if she elected to sell it back to them, (c) Compton would receive no commission or other benefit as a result of the recommended switch from the

Amerus annuity to the Resort Holding investment, and (d) the Resort Holding properties were fully insured for all risks and losses related to hurricanes and other natural disasters. Each such representation was (a) made by Compton within the scope of his agency relationship with Amerus, (b) false, (c) material to Nelson's decision to make the resulting switch, (d) unlawful twisting activity in the course of an insurance transaction, committed by Compton as an agent of Amerus, (e) in breach of the contractual duty of good faith and fair dealing which was an inherent part of the Amerus annuity contract between Amerus and Nelson, and (f) caused as a proximate result of the negligent supervision of Compton by Amerus. Nelson, a community college graduate and licensed practical nurse with no investment experience or training, reasonably relied on the presumed truth of each of those representations by Compton in acquiescing in his recommendations to cancel and surrender her annuity contract interests with Amerus.

11. As a result of the twisting transactions through which Nelson was induced to switch from her Amerus annuity to the Resort Holding investment, Amerus benefitted from collecting for itself over \$65,000.00 in surrender charges paid to Amerus in implementing the twisting conduct engaged in by Compton as its agent.

12. The illegal and fraudulent twisting conduct by Compton as agent of Amerus, through which Nelson was induced first to purchase an Amerus annuity contract and then to purchase the Resort Holding investment, was part of and incident to a larger pattern of repeated twisting activity by Compton as agent of Amerus, through which Compton induced numerous other customers to purchase Amerus annuities and then to switch their assets to Resort Holding investment

contracts, all caused by the negligent failure by Amerus to maintain and enforce a reasonably careful supervisory and compliance process to detect and deter twisting conduct.

13. Compton, continuing to act as an agent of AmerUs, affirmatively, fraudulently and expressly concealed from Nelson through at least the end of 2004 the falsity of his misrepresentations recounted above, and affirmatively and falsely continued to induce Nelson to believe that each of the transactions described above was suitable for her financial needs and was an advantageous financial transaction for her, including through false explicit re-assurances that non-payments or delays in payments by the Resort Holdings principals were a result of temporary disruptions unavoidably caused by hurricane damage, or that her investments would be returned to her as soon as transactions between or among corporate affiliates or owners of Resort Holdings were completed.

14. Through his affirmative acts of misrepresentation and concealment as described above, Compton offered and sold to Nelson the investment contracts represented by the Resort Holding investments, which constituted securities, by the use of and because of communications which contained untrue statements of material facts, and which also contained omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading (Nelson not knowing of the untruths and omissions), making Compton liable for statutory securities fraud within the meaning of *Mississippi Code Ann. 75-71-717(2)*, as a result of which Nelson is entitled to recover from Compton the full consideration paid by her for such investment securities, together

with interest at eight percent annually from the date of her payments, and costs and reasonable attorneys' fees, pursuant to the same statute.

15. By virtue of its supervisory and compliance duties as set forth above, Amerus was legally obligated to (and did) control and supervise the activity of Compton with respect to such twisting activity by Compton through which Nelson was induced to invest in the securities represented by the Resort Holding investments, and thus has joint and several liability to Nelson pursuant to *Mississippi Code Ann.* § 75-71-719, for the conduct by Compton in violation of *Mississippi Code Ann.* § 75-71-717(2).

16. As a result of the twisting transactions and other conduct described above, by Compton as an agent of Amerus, Nelson has been damaged through the loss of the entire value of her investments, amounting to over \$500,000.00 in losses to her and additional interest and earnings which would have been earned by Nelson but for the illegal conduct by the Defendants set forth above.

17. In willfully and deliberately undertaking the conduct described above, the Defendants each acted with gross and reckless disregard for their statutory and common law duties under Mississippi law and for the rights of Nelson and other annuity owners, committing a willful and tortious wrong for which they are jointly liable to Nelson for punitive damages in an amount sufficient to punish them for such wrongful conduct, to deter them from engaging in similar conduct in the future in Mississippi or elsewhere, to deter other insurers throughout the country from engaging in similar conduct, to account for the financial resources of each of the Defendants, and to compensate Nelson for her public service in holding such parties

accountable for such misconduct and vindicating the purposes of state insurance statutes prohibiting illegal twisting conduct.

Relief Requested

As to each of the theories of relief and resulting Counts set forth below, the Plaintiff Veola Nelson hereby seeks the relief set forth for each, as to which she seeks a trial by jury and a resulting judgment:

Count 1 - Negligent Misrepresentation

18. Each of the Defendants, by virtue of their conduct as described in Paragraphs 7 through 17 above, is jointly and severally liable to Nelson for compensatory damages in an amount sufficient to make Nelson whole for the entire amount of her investment losses, foregone earnings and pre-judgment interest, court costs, litigation expenses, and attorneys' fees, and in a further amount of punitive damages sufficient to deter Amerus and other insurers from engaging in such conduct in the future, having breached their duty to Nelson under the common law of negligent misrepresentation.

Count 2 - Common Law Fraud

19. Each of the Defendants, by virtue of their conduct as described in Paragraphs 7 through 17 above, is jointly and severally liable to Nelson for compensatory damages in an amount sufficient to make Nelson whole for the entire amount of her investment losses, foregone earnings and pre-judgment interest, court costs, litigation expenses, and attorneys' fees, and in a further amount of punitive

damages sufficient to deter Amerus and other insurers from engaging in such conduct in the future, having breached their duties to Nelson under the common law of fraud.

Count 3 - Negligent Supervision

20. Amerus, by virtue of its conduct as described in Paragraphs 7 through 17 above, is liable to Nelson for compensatory damages in an amount sufficient to make Nelson whole for the entire amount of her investment losses, foregone earnings and pre-judgment interest, court costs, litigation expenses, and attorneys' fees, having breached its duty of reasonable care toward Nelson as a foreseeable insurance customer, under the common law of negligence.

Count 4 - Breach of Contractual Duty of Good Faith and Fair Dealing

21. Amerus, by virtue of its conduct as described in Paragraphs 7 through 17 above, is liable to Nelson for compensatory damages in an amount sufficient to make Nelson whole for the entire amount of her investment losses, foregone earnings and pre-judgment interest, court costs, litigation expenses, and attorneys' fees, and in a further amount of punitive damages sufficient to deter Amerus and other insurers from engaging in such conduct in the future, having breached its duty of good faith and fair dealing inherently implied into and as a part of its annuity contracts with Nelson.

Count 5 - Violations of Mississippi Securities Act

22. Each of the Defendants, by virtue of their conduct as described in Paragraphs 7 through 17 above, and Amerus by virtue of its effective control of

Compton as to twisting conduct and within the meaning of *Mississippi Code Ann.* § 75-71-719, is liable to Nelson jointly and severally pursuant to *Mississippi Code Ann.* § 75-71-717(2), for the full amounts paid by Nelson for her Resort Holding investments (the entitlement to which Nelson hereby tenders and offers to convey to the Defendants pursuant to the same statute), together with interest at eight percent annually from the dates of each such payment for those investments, and costs and reasonable attorneys' fees, and punitive damages in an amount sufficient to deter Amerus and other insurance companies from engaging in similar conduct in the future.

This the ____ day of September, 2006.

VEOLA S. NELSON
By her Attorneys,
PIGOTT REEVES JOHNSON

By: _____
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