

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Case Type: OTHER - CIVIL

State of Minnesota, by its Attorney General  
Lori Swanson

Court File No. \_\_\_\_\_

Plaintiff,

**STATE OF MINNESOTA'S  
COMPLAINT**

vs.

American Equity Investment Life Insurance  
Company,

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against American Equity Investment Life Insurance Company ("American Equity"), hereby states and alleges as follows:

#### INTRODUCTION

1. American Equity is a leading seller and issuer of deferred annuities in Minnesota and across the United States. American Equity has sold deferred annuity products to elderly consumers that require a long-term investment strategy and do not pay benefits until the expiration of deferral periods of as many as 10 to 15 years or more. By misrepresenting and/or not adequately disclosing these restrictive features, American Equity issues deferred annuities to seniors even if the deferral periods extend beyond their actuarial life expectancies, making it unlikely that they will live long enough to enjoy the intended benefits. During these deferral periods, American Equity imposes exorbitant withdrawal or surrender penalties (as much as 25 percent of the annuity's value) on seniors who need access to their savings, which unnecessarily

restricts their ability to pay for legitimate, foreseeable expenses commonly incurred in the later stages of life.

2. More than half of American Equity's deferred annuity sales in Minnesota since 2000 were made to individuals 65 or older on the date of purchase. During this time, American Equity has not ensured that its deferred annuities were suitable for senior policyholders based on their age, needs, income, and other relevant circumstances. In fact, although American Equity's business is based almost exclusively on annuity sales, the company did not adopt policies or procedures to guard against unsuitable sales to senior citizens until March of 2006 -- this despite Minnesota law to the contrary. In fact, since the beginning of 2000, American Equity has rejected only one recommended sale of a deferred annuity to a Minnesota senior based on suitability concerns.

3. In addition to its indiscriminate sale of unsuitable deferred annuities to Minnesota seniors, American Equity incentivizes, fosters, and tacitly approves its agents' unfair, deceptive, and unlawful marketing of deferred annuities to senior consumers. American Equity encourages such sales by paying very lucrative commissions and other benefits to agents who sell its deferred annuities. Those commissions increase with the length of the deferral period, further encouraging the sale of American Equity's most restrictive products. In order to collect these commissions -- which, depending on the amount of the premium paid can exceed tens of thousands of dollars -- American Equity agents instill and prey upon the trust that many seniors place in their hands. American Equity agents also prey on some seniors' diminished capacity, which makes it even more difficult, if not impossible, to understand the complexities of these products. In fact, American Equity issues deferred annuities to seniors who are unaware of the deferral requirements and penalty provisions until it is too late, at which time they are forced to

pay substantial withdrawal or surrender charges to access their hard earned savings for legitimate, predictable needs.

4. An example of American Equity's unlawful practices and the harm they have caused to Minnesota seniors is the sale of a deferred annuity to L.H. and E.H., the 83 year old parents of eight children. E.H. is a retired farmer who once owned a small business. He recently has been in and out of the hospital and nursing home. L.H. suffers from heart problems that have caused her to be hospitalized as well. The couple struggles to make ends meet and stay independent on their Social Security income of approximately \$1,000 per month and a small amount investment interest. In 2003, L.H. and E.H. attended a seminar at a family restaurant in Princeton, Minnesota. The seminar was sponsored by an American Equity agent and advertised a free lunch to all attendees. Thereafter, the sponsoring agent visited L.H. and E.H. in their home and advised them to invest in an American Equity annuity. The agent stated that the interest rate on the annuity would never be less than three percent and would increase if the market improved. He also stated that the couple could get their money out of the annuity, which offered a premium bonus of six percent, at any time. The couple does not recall any discussion of withdrawal or surrender charges, and they were lead to believe that they could withdraw any money they invested and the premium bonus at any time, without penalty. In October of 2003, based on the agent's advice, L.H. and E.H. invested \$85,000, approximately 75 percent of their liquid net worth, in an American Equity annuity. Contrary to what they were lead to believe, the annuity had a deferral period of 12 years, and L.H. and E.H. were not scheduled to begin receiving annuity payments until they were both 91 years old. In July of 2006, two and one half years after the sale, E.H. developed diabetes that prevented him from climbing stairs. Accordingly, the couple was forced to move into single-level home, and they had to withdraw

funds from the annuity in order to make the necessary move. At that time, E.H. and L.H. first learned of the applicable withdrawal and surrender provisions. Pursuant to those provisions, American Equity required the couple to pay \$10,397 in surrender charges (more than 12 percent of their initial investment) in order to access their money.

5. Another example of American Equity's unlawful practices is the sale of a deferred annuity to N.P., a former construction and farm laborer. N.P. lives in subsidized public housing on monthly Social Security payments of less than \$500. In October of 2000, when he was 80 years old, an American Equity agent visited N.P. in his daughter's home, where he then lived. The agent advised N.P. to transfer \$24,075 (approximately 87 percent of his current net worth) from certificates of deposit ("CDs") into an American Equity annuity. Although N.P. did not fully understand what an annuity was, the agent stated that the annuity would generate more income than a CD and made it sound like a reasonable deal. Based on the agent's advice, N.P. cancelled his CDs and purchased the annuity, which he thought would provide a current stream of income to supplement his Social Security income. Four years later, N.P. needed access to the funds to support himself. At that time -- for the first time -- N.P. discovered his annuity had a 15-year deferral period, was not scheduled to begin making regular payments until N.P. was 95 years old, and required him to pay a significant penalty in order to access his money. Because he needed the money to live, N.P. cancelled the annuity and was forced to pay a surrender charge of \$6,885 (more than 23 percent of the annuity's then current value). N.P. walked away with \$1,421 less than he put into the annuity four years earlier.

6. Under Minnesota law, Minnesota's seniors deserve better. Accordingly, by this Complaint, the State of Minnesota, by its Attorney General, Lori Swanson, seeks an order enjoining American Equity from, among other things, selling deferred annuity products to senior

citizens without first determining their suitability for the prospective purchasers based on their age and other relevant circumstances.

#### **PARTIES**

7. The State of Minnesota, by its Attorney General, Lori Swanson, is authorized pursuant to common law authority, including *parens patriae* authority, to initiate and maintain legal action on behalf of the State of Minnesota and its citizens to enforce rights pursuant to state and federal laws. The Attorney General also has the authority to investigate violations of state law pertaining to unfair and unlawful practices in business, commerce and trade pursuant to Minn. Stat. §§ 8.31 and 8.32 (2006). The Attorney General is authorized to initiate this action on behalf of the State of Minnesota and its senior citizens to enforce these state laws.

8. Defendant American Equity is a for-profit corporation organized under the laws of Iowa, with a principal place of business located at 5000 Westown Parkway, West Des Moines, Iowa 50266. American Equity is authorized to do business in Minnesota. Founded in 1995, American Equity's business is based primarily on the sale of annuities. In 2006, American Equity earned operating income of \$73.3 million, a company record. American Equity reported total annuity sales in 2005 and 2006 of \$3.8 billion. During the first quarter of 2007, the company reported an additional \$444.4 million in annuity sales.

#### **JURISDICTION AND VENUE**

9. This Court has personal jurisdiction over American Equity because American Equity does business in Minnesota. Pursuant to Minn. Stat. § 484.01 (2006), the Court has jurisdiction over the subject matter of this action.

10. Venue in Hennepin County is proper under Minn. Stat. § 542.09 (2006), because Defendant conducts business in Hennepin County.

## STATEMENT OF FACTS

### American Equity's Deferred Annuities

11. The "deferred annuities" at issue in this case are different from conventional, "immediate annuities." Immediate annuities typically require policyholders to make an initial lump sum payment in exchange for guaranteed periodic payments over time. Such periodic payments begin immediately or shortly after the date of purchase. Immediate annuities often continue to make periodic payments until the policyholder's death, even if all premiums paid have been returned to the policyholder. As a result, such annuities ensure that policyholders will receive a current, fixed, and dependable stream of income from the date of purchase forward.

12. Deferred annuities also require policyholders to make an initial lump sum payment, but periodic payments to deferred annuity holders do not begin until the expiration of a "deferral period," which often last as many as 10 to 15 years or longer. During the deferral period, policyholders are prohibited from withdrawing more than a nominal amount of the annuity's value in any given year after the first without incurring significant withdrawal or surrender penalties, which severely limits access to those funds.

13. American Equity offers two types of deferred annuities -- fixed and indexed. Both types require a long-term investment strategy. For example, under a fixed deferred annuity, policyholders make an up front premium payment, and, during the deferral period, the premium earns interest at a fixed rate that typically is set or adjusted at American Equity's discretion. American Equity's indexed annuities also require an up front payment. However, during the deferral period, premiums paid on such annuities earn interest at variable rates depending on the performance of a market index, such as the Standard & Poor's 500. American Equity's indexed annuities generally impose maximum and minimum limits on the interest payable in a given

period, and some offer the combination of fixed and indexed rates. At the end of the applicable deferral period on either type of deferred annuity, policyholders typically may choose to begin receiving periodic payments or a lump sum based on the annuity's accumulated value.

14. Deferred annuities may be suitable for individuals with sufficient disposable income and savings to invest a lump sum for a long period of time, wait out the deferral period, and expect to live long enough to enjoy the income stream that results. In contrast, deferred annuities are not suitable for senior citizens who live on limited, fixed incomes, and whose remaining financial safety net after making the premium payment is insufficient to cover legitimate, foreseeable, and ongoing needs such as housing, food, prescription drugs, and similar living, health care and medical expenses. In fact, senior citizens who must withdraw funds to meet such needs during a deferral period, or who must surrender a deferred annuity altogether, risk making pennies on the dollar. For these and other reasons, Minnesota law requires that deferred annuity sales to senior citizens be made thoughtfully and with reasonable grounds for believing that the product is suitable for the consumer.

#### **American Equity's Sale and Marketing of Unsuitable Deferred Annuities to Seniors**

15. Contrary to Minnesota law, American Equity has elevated profitability over the suitability of deferred annuity sales to senior citizens. In fact, American Equity sells more deferred annuities to seniors in Minnesota than to non-seniors. American Equity subscribes to the mantra, "You can never be too old for the right annuity." The company and its agents have acted on this mantra for years, regardless of whether the facts and circumstances supported their actions.

16. Senior citizens are particularly vulnerable targets for American Equity and its agents because, collectively, they represent billions of dollars in hard earned life savings.

Seniors also tend to be more willing to put their trust in American Equity agents who purport to be investment professionals acting with seniors' best interests at heart. Unfortunately, many such agents focus on the lucrative commissions and other benefits earned on deferred annuity sales, regardless of suitability concerns. American Equity and its agents often instill trust in seniors, only to exploit it by using deceptive and misleading sales tactics.

17. For example, American Equity and its agents use deceptive methods to gain access to the senior market and exploit their financial concerns. Such methods include holding seminars and meetings in places where seniors tend to feel comfortable, such as in their homes, hotels, senior centers, and other similar locations. These seminars often provide a free lunch, which is intended to maximize senior attendance, and they are vaguely advertised as estate or wealth management seminars. In reality, such meetings typically are part of a larger scheme to profile, identify, and exploit potential deferred annuity purchasers.

18. After identifying prospective purchasers, American Equity agents have made regular and repeated attempts to sell one or more unsuitable deferred annuities to the same seniors. Upon information and belief, American Equity agents have recommended that the seniors surrender existing annuities with American Equity or other issuers, pay the applicable surrender fees, and use the newly available funds to purchase other deferred annuities offered by American Equity. By churning sales, American Equity and its agents have benefited, and Minnesota seniors have suffered.

19. American Equity agents also deceptively compare deferred annuities to CDs. However, the company's agents have repeatedly failed to adequately explain or have misrepresented the differences between CDs and more restrictive deferred annuities, such as the



fact that the return promised on such annuities is available only if seniors do not access more than a nominal amount of their funds during the long deferral periods.

20. American Equity knows or reasonably should have known that its agents commonly use these and other deceptive tactics to market and sell deferred annuities to seniors in Minnesota, but it has done little to stop it. In fact, the company first adopted a suitability review policy in March of 2006, and, since 2000, it has rejected only one recommended sale of a deferred annuity to a Minnesota senior based on suitability concerns. Upon information and belief, the prospective purchaser was diagnosed with advanced Alzheimer's disease approximately nine years prior to the date of the recommended sale (January 24, 2007) and had been living in an assisted living facility since 1994.

21. Instead of adequately policing its agents and confirming the suitability of their recommended sales, American Equity pays them substantial commissions on deferred annuity sales to seniors, regardless of their suitability. Commissions paid to American Equity agents based on deferred annuity sales to Minnesota seniors' have exceeded twenty-five thousand dollars for one sale. Additionally, commission rates increase with the length of the applicable deferral period, which further encourages sales of the company's most restrictive deferred annuity products. American Equity's top selling agents also are eligible for end of the year benefits including all-expense-paid vacations to destinations such as Bermuda, Hawaii, and Cancun.

22. American Equity is able to pay lucrative commissions and benefits to agents who sell unsuitable deferred annuities because of the exorbitant penalties that apply to withdrawals and surrenders during the deferral periods. Thus, in addition to restricting seniors' ability to withdraw necessary funds during a deferral period, these penalties facilitate American Equity's

ability to recoup the commissions it pays to agents who flaunt Minnesota's suitability and consumer protection laws.

**Further Examples of the Harm to Minnesota Consumers**

23. The following are additional illustrative, but non-exclusive, examples of American Equity's unlawful practices.

24. C.B. is an 84 year old retired farmer. He and his 76 year old wife, I.B., live on monthly Social Security payments of \$1,400 that do not sufficiently cover their living expenses. In 2004, an American Equity agent recommended that C.B. transfer funds in a Conseco investment to an American Equity annuity. C.B. trusted the agent, with whom the couple had worked for many years. The agent stated that he needed C.B.'s signed application within 24 hours so that C.B. would not lose out on the American Equity deal. Accordingly, C.B. signed the required documents and mailed them to the agent, authorizing an investment of \$58,403 in the American Equity annuity for which the agent earned a \$2,628 commission. One year later, C.B. and his wife sought to withdraw \$15,000 from the annuity to pay for necessary living expenses. For the first time, C.B. discovered that the annuity has a deferral period of 10 years, and, during that time, the couple cannot withdraw more than 10 percent of its value in a given year without incurring significant penalties. Because they needed more than the minimum amount, the couple incurred a \$1,224 withdrawal penalty to access their funds. The couple would not have purchased the American Equity annuity had they understood the effect of these withdrawal restrictions and penalties.

25. L.S. and L.S., husband and wife, live on monthly Social Security and interest payments of less than \$1,200. Their various expenses, which consist of medications for dementia, diabetes, neuropathy, rheumatoid arthritis, diabetes, and high blood pressure, among

other ailments, are approximately \$1,600 per month. The husband, a retired farmer, needs knee replacement surgery but, for now, manages the pain with medication. In June of 2000, when they were 79 and 74 years old, respectively, an American Equity agent advised the couple to invest \$31,524 in two American Equity annuities. The agent knew that this amount represented approximately 45 percent of the couple's liquid net worth. Neither L.S. is a risk-taker. Prior to this time, they typically invested their money in one-year CDs that offered guaranteed rates of return and easy access to their money in case of emergency. Based on their eighth grade educations, the couple thought the American Equity agent's description of the annuity products was easy to understand. In fact, they believed the annuities were like a low-risk savings account with a guaranteed interest rate. Trusting the agent's advice, the couple purchased the two annuities. They did not know that both annuities have a 15-year deferral period and impose a 25 percent penalty for surrenders within the first six years of the contract. The couple would not have purchased the annuities had they known that the deferral period and penalty provisions would prevent them from accessing such a large portion of their money for 15 years.

26. R.F. is a retired factory worker. In August of 2004, his wife, H.F., was diagnosed with terminal cancer. A few months after the diagnosis, R.F. met with an American Equity agent with whom the couple had worked in the past. At that time, R.F. and H.F. were consumed with anxiety due to H.F.'s considerable pain, cancer treatments and declining health. Despite the circumstances, the agent advised R.F. to invest \$123,567, nearly 25 percent of the couple's liquid net worth, in an American Equity annuity. The recommended annuity has a 10-year deferral period, and it imposes financial penalties of as much as 12 percent of the annuity's value in the event of early withdrawals or outright surrender. American Equity issued the annuity to R.F. in

January of 2005, at which time he was almost 80 years old. H.F. died in June of 2005, and R.F. is not scheduled to begin receiving annuity payments until he is 90 years old.

27. R.B. is a 73 year old farmer. In 2005, he sold 30 to 40 head of cattle, netting roughly \$10,000. R.B. and his wife, K.B., a retired home health care worker, deposited the proceeds into their savings account and earmarked it for their funeral expenses. Shortly thereafter, an American Equity agent whom the couple had known for many years visited the farm and advised them to transfer the proceeds into an American Equity annuity. The agent stated that they would earn a \$600 bonus, and the annuity would pay six percent interest. The agent did not say that the interest rate was temporary. Based on the agent's advice, R.B. and K.B. believed they were buying something like a CD with bonuses and a better interest rate. After purchasing the annuity, however, they learned their \$10,000 is locked into the annuity for a deferral period of 16 years, and they are not scheduled to begin receiving annuity payments until they are 87 and 92 years old, respectively. They also learned that they will have to pay penalties in order to access more than a nominal amount of their money during the deferral period. In March of 2006, American Equity sent R.B. and K.B. a statement showing that, at that time, their \$10,000 investment was worth only \$9,007 given the applicable surrender charges and penalties. Despite their request, American Equity has refused to rescind the policy.

28. V.C. is an 86 year-old widow of 20 years. She is a survivor of triple-bypass surgery and takes seven different medications on a regular basis. V.C.'s late husband worked at Sears before opening his own auto repair shop, at which V.C. also used to work. V.C. pays \$835 in rent every month, which is slightly more than she receives in monthly Social Security income. In August of 2006, when V.C. was 85 years old, an American Equity agent who V.C. has known since her husband was alive advised her to invest \$203,858, more than half of her liquid net

worth, in an American Equity annuity. At the time of the recommendation, the agent knew of V.C.'s age and health problems. V.C. also told the agent that although her savings were sufficient at that time to cover her living expenses, she occasionally would need access to any money she invested in the annuity. V.C. can only read large print, and she trusted the agent to recommend an investment with a good interest rate that would allow her to withdraw the funds if necessary. The agent simply stated that the annuity would guarantee a five percent interest rate for five years. He said nothing about withdrawal penalties or fees, nor did he say anything about how long the money would have to be kept in the annuity. Based on the agent's advice, V.C. purchased the recommended annuity in August of 2006, believing it was very similar to a CD. She subsequently was shocked to learn that the annuity has a 10-year deferral period, and she cannot withdraw more than a small percentage of her money in a given year without incurring substantial withdrawal or surrender charges. She never would have purchased the annuity had she known of these restrictions.

29. C.L. is a retired employee of a non-profit entity, and her husband, R.L., is a retired high school teacher and coach. In 2005, C.L. and R.L. met with an American Equity agent to review the adequacy of R.L.'s health insurance coverage. During the meeting, the couple informed the agent that they recently attended financial planning seminars, and the conversation turned to annuities. The couple informed the agent that their monthly income from Social Security and pension payments is identical to their monthly expenses, and they would need access to any invested funds to pay for additional expenses. Based on this information, the agent advised the couple to transfer approximately \$400,000 -- 100 percent of the funds they had invested in mutual funds, and 100 percent of their life savings -- into three American Equity annuities. The agent specifically stated that the couple could withdraw all of the funds, without

penalty, after five years. Based on the agent's advice, C.L. and R.L. purchased the annuities in May of 2005, at which time they were 64 and 71 years old, respectively. The couple subsequently learned that they were misled by the agent who, upon information and belief, earned \$40,658 in commissions on the sale. In fact, the annuities they now own each have a 16-year deferral period, and C.L. and R.L. are not scheduled to begin receiving annuity payments until they are 80 and 87 years old, respectively. After discovering that their life savings is locked into the American Equity annuities for 11 years longer than they were lead to believe, C.L. and R.L. asked American Equity to cancel the sale. Despite the misrepresentations of its agent, American Equity refused.

**COUNT I**  
**VIOLATIONS OF MINN. STAT. §. 72A.20, SUBD. 34**

30. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

31. Minnesota Statute 72A.20, subd. 34 (2006), provides in relevant part:

In recommending or issuing life, endowment, individual accident and sickness, long-term care, annuity, life-endowment, or Medicare supplement insurance to a customer, an insurer, either directly or through its agent, must have reasonable grounds for believing that the recommendation is suitable for the customer.

32. American Equity's conduct described above constitutes multiple, separate violations of Minn. Stat. § 72A.20, subd. 34.

**COUNT II**  
**VIOLATION OF MINN. STAT. § 60K.46**

33. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

34. Minnesota Statute § 60K.46, subd. 4 (2006), provides in relevant part:

In recommending the purchase of any life, endowment, individual accident and sickness, long-term care, annuity, life-endowment, or Medicare supplement insurance to a customer, a producer must have reasonable grounds for believing that the recommendation is suitable for the customer and must make reasonable inquiries to determine suitability. The suitability of a recommended purchase of insurance will be determined by reference to the totality of the particular customer's circumstances, including, but not limited to, the customer's income, the customer's need for insurance, and the values, benefits, and costs of the customer's existing insurance program, if any, when compared to the values, benefits, and costs of the recommended policy or policies.

35. Minnesota Statute § 60K.49, subd. 1 (2006), provides:

A person performing acts requiring a producer license under this chapter is at all times the agent of the insurer and not the insured.

36. American Equity and its agent's practices described above constitute violations of Minn. Stat. § 60K.46, subd. 4.

**COUNT III  
VIOLATIONS OF MINN. STAT. § 325D.44**

37. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

38. Minnesota Statute § 325D.44, subd. 1 (2006), provides, in part, that:

A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

...

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

...

(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

...

(13) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

39. American Equity's conduct as described above constitutes multiple, separate violations of Minn. Stat. § 325D.44, subd. 1 (2006).

**COUNT IV  
VIOLATIONS OF MINN. STAT. § 325F.67**

40. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

41. Minnesota Statutes § 325F.67 (2006) prohibits, in part:

Any person, firm, corporation, or association who, with intent to sell...merchandise..., services, or anything offered by such person, firm, corporation, or association, directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto...makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading....

42. American Equity's conduct described above constitutes multiple, separate violations of Minn. Stat. § 325F.67.

**COUNT V  
VIOLATIONS OF MINN. STAT. § 325F.69**

43. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

44. Minnesota Statutes § 325F.69, subd. 1 (2006) prohibits:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby...



45. American Equity's conduct described above constitutes multiple, separate violations of Minn. Stat. § 325F.69.

**COUNT VI  
VIOLATIONS OF MINN. STAT. § 72A.20, SUBD. 1**

46. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

47. Minnesota Statutes § 72A.19, subd. 1 (2006) prohibits any trade practice in the business of insurance defined to be an unfair method of competition or an unfair or deceptive act or practice.

48. Minnesota Statutes § 72A.20, subd. 1 (2006) provides that:

Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby... shall constitute an unfair method of competition and an unfair and deceptive act or practice in the business of insurance.

49. American Equity's conduct described above constitutes multiple, separate violations of Minn. Stat. § 72A.20, subd. 1 (2006).

**COUNT VII  
VIOLATIONS OF MINN. STAT. § 72A.20, SUBD. 2**

50. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

51. Minnesota Statute § 72A.19, subd. 1, prohibits any trade practice in the business of insurance "which is defined in section 72A.17 to 72A.32 as or determined pursuant to sections 72A.17 to 72A.32 to be an unfair method of competition or an unfair or deceptive act or practice.

52. Minnesota Statute § 72A.20, subd. 2, provides that:

Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station, or in any other way, an advertisement, announcement, or statement, containing any assertion, representation, or statement with respect to the business of insurance, or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading, shall constitute an unfair method of competition and an unfair and deceptive act or practice.

53. American Equity's conduct described above constitutes multiple, separate violations of Minn. Stat. § 72A.20, subd. 2.

**COUNT VIII  
VIOLATIONS OF MINN. STAT. § 325F.71**

54. Plaintiff re-alleges and incorporates by reference all prior paragraphs of this Complaint.

55. Minnesota Statute § 325F.71, subd. 2 (2006), provides, in part, that:

(a) In addition to any liability for a civil penalty pursuant to sections 325D.43 to 325D.48, regarding deceptive trade practices; 325F.67, regarding false advertising; and 325F.68 to 325F.70, regarding consumer fraud; a person who engages in any conduct prohibited by those statutes, and whose conduct is perpetrated against one or more senior citizens or disabled persons, is liable for an additional civil penalty not to exceed \$10,000 for each violation, if one or more of the factors in paragraph (b) are present. . . .

(1) whether the defendant knew or should have known that the defendant's conduct was directed to one or more senior citizens or disabled persons;

(2) whether the defendant's conduct caused senior citizens or disabled persons to suffer: loss or encumbrance of a primary residence, principal employment, or source of income; substantial loss of property set aside for retirement or for personal or family care and maintenance . . . or assets essential to the health or welfare of the senior citizen or disabled person;

(3) whether one or more senior citizens or disabled persons are more vulnerable to the defendant's conduct than other members of the public because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and actually

suffered physical, emotional, or economic damage resulting from the defendant's conduct; or

(4) whether the defendant's conduct caused senior citizens or disabled persons to make an uncompensated asset transfer that resulted in the person being found ineligible for medical assistance.

56. American Equity's conduct as described above constitutes multiple, separate violations of Minn. Stat. § 325F.71, subd. 2 (2006).

### **RELIEF**

WHEREFORE, the State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to award judgment against Defendant:

1. Declaring that American Equity's acts described in this Complaint constitute multiple, separate violations of Minn. Stat. § 60K.46, subd. 4, § 72A.20, subds. 1, 2, 34; § 325D.44, subd. 1, § 325F.67, § 325F.69, subd. 1, and 325F.71, subd. 2.

2. Enjoining American Equity, and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert of participation with it, from selling a deferred annuity to a senior without first determining the suitability of the annuity for the purchaser's actuarial life expectancy and other relevant circumstances or otherwise violating in any other way Minn. Stat. § 60K.46, subd. 4, § 72A.20, subds. 1, 2, 34; § 325D.44, subd. 1, § 325F.67, § 325F.69, subd. 1, and 325F.71, subd. 2.

3. Awarding judgment against American Equity for civil penalties pursuant to Minn. Stat. §§ 8.31, subd. 3, and 325F.71, subd. 2, for each separate violation of Minn. Stat. § 60K.46, subd. 4, § 72A.20, subds. 1, 2, 34; § 325D.44, subd. 1, § 325F.67, and § 325F.69, subd. 1.

4. Awarding judgment against American Equity for restitution under the *parens patriae* doctrine, Minn. Stat. § 8.31, the general equitable powers of this Court, and any other authority for all persons injured by American Equity's acts described in this Complaint.

5. Awarding plaintiff its costs, including costs of investigation and attorney fees, as authorized by Minn. Stat. § 8.31, subd. 3a.

6. Granting such further relief as the Court deems appropriate and just.

Dated: April 26, 2007

Respectfully submitted,

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**MINN. STAT. § 549.211 ACKNOWLEDGMENT**

The party on whose behalf the attached pleading is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2006).

Dated: April 26, 2007



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