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Overview

Todd Fuller is a shareholder in the Miami and Washington, D.C. offices of Carlton Fields. Todd's practice involves representing life insurance, financial services companies, and other businesses in class actions and other complex federal and state court litigation including mass-actions, multi-district litigation, and regulatory proceedings throughout the United States.

Todd has extensive experience in matters involving the sale of life products, including life insurance, variable annuities and fixed annuities, and their application and use in advanced design concepts such as pension plans, welfare benefit plans, tax shelters, and other wealth accumulation and preservation models. He has defended life insurers in a wide variety of multistate market conduct and sales practices cases, including vanishing premium insurance cases; stranger-originated life insurance cases; revenue sharing/excessive fee litigation associated with 401(k), 403(b), and 457 retirement plans; Section 412(i) and 419 employee benefit plan litigation; cost of insurance litigation; and annuity sales to seniors. He is regularly involved in sophisticated litigation practice and has briefed and argued cases in state and federal courts throughout the country.

Todd is committed to the continued understanding and identification of changing business environments as they intersect with the law, public perception, and evolving regulatory standards. Within this framework, he strives to provide innovative and imaginative solutions to his clients' complex business and legal issues.

Todd is the co-chair of the firm's Life, Annuity, and Retirement Litigation Practice. He is also the former vice chair of the ABA's Health and Disability & Life Insurance Law Committees.

Experience

- *Lebbin v. Transamerica Life Ins. Co.*, No. 20-11756, 2021 WL 3278166 (11th Cir. Aug. 2, 2021) (successful appeal reversing the district court's summary judgment order against Transamerica, vacating an over \$4 million damages order, and remanding to the district court with instructions to enter summary judgment in Transamerica's favor in breach of contract action relating to joint and last survivor life insurance policies).
- *Dun v. Transamerica Premier Life Ins. Co.*, 858 F. App'x 379 (D.C. Cir. 2021) (affirming the district court's summary judgment ruling in Transamerica Premier's favor in putative class action relating to accidental death policy).
- *ASG&C, Inc. v. Arch Specialty Ins. Co.* (E.D.N.Y. 2021) (successful motion to dismiss with prejudice in action challenging the enforceability of premium audit provisions in CGL policy).
- *Dun v. Transamerica Premier Life Ins. Co.*, No. 1:19-cv-00040, 2020 WL 4001472 (D.D.C. July 15, 2020) (successful motion for summary judgment in putative class action relating to accidental death policy).
- *Sides v. Athene Annuity & Life Co.*, No. 3:19-cv-00703, 2020 WL 2114380 (W.D.N.C. May 4, 2020) (successful motion to dismiss with prejudice in matter involving fraud and theft of disputed death benefit proceeds).
- *Mandel v. Pacific Life Ins. Co.* (Fla. Cir. Ct. 2020) (successful resolution of fraud-based complaint relating to \$45 million life insurance policy funded through premium financing arrangement).
- *Cantor v. Pruco Life Ins. Co.* (Fla. Cir. Ct. 2020) (successful summary judgment, following reconsideration, on disputed key man life insurance policy).
- *Kawtoski v. Pacific Select Distrib., LLC*, No. 17-00488, 2018 WL 497093 (FINRA Jan. 10, 2018) (successful defense of fraud-based claims relating to claimant's investment in variable annuities).
- *Collins v. Fluid Routing Sols., LLC*, 371 F. Supp. 3d 1076 (M.D. Fla. 2018) (successful defense of plan participant's claims for supplemental life insurance benefits offered through employee benefit plan).
- *Patel v. Pruco Life Ins. Co.* (Dallas County, Tex. 2018) (favorable resolution of yearslong litigation relating to the sale of life insurance used to fund a multiple-employer welfare benefit plan under section 419A(f)(6) of the Internal Revenue Code).
- *Narayan v. Pruco Life Ins. Co.* (Tulare County, Cal. 2017) (favorable resolution of litigation relating to the sale of life insurance used to fund a multiple-employer welfare benefit plan under section 419A(f)(6) of the Internal Revenue Code).
- *Patel v. Pruco Life Ins. Co.* (Dallas County, Tex. 2016) (favorable resolution of yearslong litigation relating to the sale of life insurance used to fund a multiple-employer welfare benefit plan under section 419A(f)(6) of the Internal Revenue Code).

- *IPC v. Matheson*, 190 So. 3d 643 (Fla. 3d DCA 2015) (affirming trial court's summary judgment upholding the validity of a 1993 settlement agreement protecting Crandon Park from degradation through commercial expansion).
- *Kushnir v. Aviva Life & Annuity Co.*, No. 2:11-cv-07701, 2013 WL 4479196 (E.D. Pa. Aug. 22, 2013) (granting motion to dismiss plaintiffs' fraud-based claims in action against insurer relating to alleged misrepresentations regarding the validity and future tax consequences associated with life insurance policies used to fund plaintiffs' employee benefit plan under Section 412(i) of the Internal Revenue Code).
- *Volvo Fin. Servs., LLC v. Financiera TFC S.A.*, No. 2:12-cv-05609, 2013 WL 3761035 (D.N.J. July 16, 2013).
- *Chau v. Aviva Life & Annuity Co.*, No. 3:09-cv-02305, 2012 WL 6522150 (N.D. Tex. Dec. 14, 2012) (granting motion to dismiss plaintiffs' third amended mass action complaint with prejudice in action relating to the design, sale, and marketing of certain specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Zarrella v. Pacific Life Ins. Co.*, 498 F. App'x 945 (11th Cir. 2012) (affirming district court's summary judgment in putative nationwide class action asserting breach of contract and California consumer protection law claims against insurer relating to the validity and future tax consequences associated with certain life insurance policies used to fund plaintiffs' employee benefit plan under Section 412(i) of the Internal Revenue Code).
- *Donaldson v. First Union Nat'l Bank*, 99 So. 3d 951 (Fla. 2d DCA 2012).
- *Paul v. Aviva Life & Annuity Co.*, 487 F. App'x 924 (5th Cir. 2012) (affirming district court's dismissal with prejudice of putative nationwide class action asserting RICO and common-law fraud claims based on the design, sale, and marketing of life insurance policies used to fund employee benefit plans under Sections 419A(f)(6) and 419(e) of the Internal Revenue Code).
- *Drilling Consultants, Inc. v. First Montauk Sec. Corp.*, No. 8:10-cv-02873, 2012 WL 3522607 (M.D. Fla. Aug. 14, 2012) (granting summary judgment with respect to breach of contract and negligent misrepresentation claims in action against insurer relating to alleged misrepresentations regarding the validity and future tax consequences associated with life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Zarrella v. Pacific Life Ins. Co.*, 820 F. Supp. 2d 1371 (S.D. Fla. 2011) (granting summary judgment in putative nationwide class action asserting breach of contract and California consumer protection claims against insurer relating to the validity and future tax consequences associated with certain life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Ricupito v. Indianapolis Life Ins. Co.*, No. 3:09-cv-02389, 2011 WL 3820970 (N.D. Tex. Aug. 30, 2011) (granting summary judgment in action alleging that certain life insurance contracts designed for use in Section 412(i) and 419 benefit plans guaranteed the validity or tax consequences of plaintiffs' employee benefit plans).

- *Bhatia v. Indianapolis Life Ins. Co.*, No. 3:09-cv-01086, 2011 WL 3820825 (N.D. Tex. Aug. 29, 2011) (granting motion for judgment on the pleadings in action asserting fraud-based claims against insurer relating to marketing and sale of life insurance policies to fund Section 412(i) plan).
- *Zarrella v. Pacific Life Ins. Co.*, 809 F. Supp. 2d 1357 (S.D. Fla. 2011) (*Zarrella III*) (granting motion to dismiss second amended putative nationwide class action asserting fraud-based claims against insurer relating to alleged misrepresentations and omissions regarding the validity and future tax consequences of certain life insurance policies used in plaintiffs' Section 412(i) benefit plan).
- *Chau v. Aviva Life & Annuity Co.*, No. 3:09-cv-02305, 2011 WL 3156702 (N.D. Tex. July 25, 2011) (*Chau II*) (dismissing with prejudice mass action asserting claims relating to the design, sale, and marketing of certain specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Paul v. Aviva Life & Annuity Co.*, No. 3:09-cv-01490, 2011 WL 2713649 (N.D. Tex. July 12, 2011) (*Paul II*) (dismissing with prejudice putative nationwide class action asserting RICO and common-law fraud claims based on the design, sale, and marketing of life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Drilling Consultants, Inc. v. Pacific Life Ins. Co.*, 806 F. Supp. 2d 1228 (M.D. Fla. 2011) (granting motion to dismiss claims for breach of contract, breach of fiduciary duty, and violations of California consumer protection laws in action relating to the design, sale, and marketing of specially designed life insurance policies used to fund plaintiffs' Section 412(i) benefit plan).
- *Chau v. Aviva Life & Annuity Co.*, No. 3:09-cv-02305, 2011 WL 1990446 (N.D. Tex. May 20, 2011) (*Chau I*) (granting motion to dismiss mass action asserting claims relating to the design, sale, and marketing of specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Zarrella v. Pacific Life Ins. Co.*, 755 F. Supp. 2d 1231 (S.D. Fla. 2011) (*Zarrella II*) (dismissing amended putative nationwide class action asserting fraud-based claims against insurer relating to alleged misrepresentations and omissions regarding the validity and future tax consequences of certain life insurance policies used in plaintiffs' Section 412(i) benefit plan).
- *Paul v. Aviva Life & Annuity Co.*, No. 3:09-cv-01490, 2010 WL 5105925 (N.D. Tex. Dec. 14, 2010) (*Paul I*) (granting motion to dismiss putative nationwide class action asserting RICO and fraud-based claims relating to the design, sale, and marketing of specially designed life insurance policies used to fund employee benefit plans under Section 419 of the Internal Revenue Code).
- *Zarrella v. Pacific Life Ins. Co.*, 755 F. Supp. 2d 1218 (S.D. Fla. 2010) (*Zarrella I*) (granting motion to dismiss putative nationwide class action asserting fraud-based claims against insurer relating to alleged misrepresentations and omissions regarding the validity and future tax consequences of certain life insurance policies used in plaintiffs' Section 412(i) benefit plan).
- *Montoya v. N.Y. State United Teachers, ING Life Ins. & Annuity Co.*, 754 F. Supp. 2d 466 (E.D.N.Y. 2010) (granting motion to dismiss putative class action relating to alleged breaches of fiduciary duties based on revenue sharing payments, alleged excess fees, and the endorsement of certain tax deferred annuities in employer's Section 403(b) retirement plan).

- *Montoya v. ING Life Ins. & Annuity Co.*, 653 F. Supp. 2d 344 (S.D.N.Y. 2009) (granting motion to dismiss putative class action relating to alleged breaches of fiduciary duties with respect to the endorsement of certain tax deferred annuities offered through an employer's Section 403(b) retirement plan).
- *Berry v. Indianapolis Life Ins. Co.*, 638 F. Supp. 2d 732 (N.D. Tex. 2009) (*Berry II*) (granting dismissal with prejudice of putative nationwide class action relating to the design, sale, marketing, and administration of specially designed insurance policies used to fund tax-advantaged defined benefit pension plans under Section 412(i) of the Internal Revenue Code).
- *Hildebrandt v. Indianapolis Life Ins. Co.* (N.D. Tex.) (successful defense of putative nationwide class action asserting claims relating to the design, sale, and marketing of life insurance policies used to fund employee benefit plans under Section 412(i) of the Internal Revenue Code).
- *Berry v. Indianapolis Life Ins. Co.*, 600 F. Supp. 2d 805 (N.D. Tex. 2009) (*Berry I*) (granting motion to dismiss putative nationwide class action asserting claims against insurers and insurance consultants relating to the design, sale, marketing, and administration of specially designed insurance policies used to fund defined benefit pension plans under Section 412(i) of the Internal Revenue Code, and marketed as a proposed tax shelter. The essence of the complaint was that the insurers and consultants committed fraud by opining in the early 2000s that the Section 412(i) plans and insurance policies would be valid and provide favorable future tax advantages, and failed to disclose the possibility that the IRS would issue guidance suggesting that the plan's contemplated tax advantages were invalid).
- *In re Indianapolis Life Ins. Co. I.R.S. § 412(i) and § 419 Plans Life Ins. Mktg. Litig.*, 581 F. Supp. 2d 1364 (J.P.M.L. 2008) (successfully established an MDL proceeding for claims relating to the design, sale, and marketing of life insurance policies used to fund employee benefit plans under Sections 412(i) and 419 of the Internal Revenue Code)
- *Libby v. Am. Bankers Sales Corp.*, 932 N.E.2d 1222 (Ill. App. Ct. 2007).
- *S. Fla. Water Mgmt. Dist. v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004).

Areas of Focus

Practices

- Life, Annuity, and Retirement Litigation
- Life, Annuity, and Retirement Solutions
- Litigation and Trials
- Appellate & Trial Support
- Financial Services Regulatory
- Employee Benefits, Compensation & ERISA
- Class Actions

Industries

- Life, Annuity, and Retirement Solutions
- Life, Annuity, and Retirement Solutions
- Property & Casualty Insurance

Insights

05.11.2022

Must ERISA Actuarial Equivalence Be “Reasonable”?

01.11.2022

Universal Life Policyowner Not Entitled to Pro Rata Premium Refund Following Insured’s Death

05.05.2021

New Hampshire Supreme Court Invalidates Long-Term Care Rate Caps

02.06.2020

Clarity on Application of California Usury Law: Insurers Not Subject to Compound Interest Limitations

10.04.2019

Defendants Fend Off Challenge to FIA’s Proprietary Index

10.04.2019

Court Sheds Light on ERISA’s Fiduciary Exception to Attorney-Client Privilege

10.04.2019

Multiple Plaintiffs Take Shot at SEC Regulation Best Interest

04.04.2019

Circuit Court Rules Insurance Agents Are Not “Employees” Under ERISA

12.19.2018

Class Certification Denied in Suitability Class Action

03.31.2018

Plaintiffs’ Notice That the ‘Taxman Cometh’ Was Sufficient to Trigger Statute of Limitations

11.15.2012

Recent Decisions in § 419 and § 412(i) Litigation

11.15.2012

Recent Decisions in § 419 and § 412(i) Litigation

11.15.2011

Recent Decisions in § 412(i) and § 419 Litigation

02.15.2010

Class Notification Costs

11.15.2009

Panel Expands Scope of MDL No. 1983

11.15.2009

Preemptive Motion to Deny Class Certification Approved

11.15.2009

ERISA Class Dismissed for Lack of Subject Matter Jurisdiction

11.15.2009

Dismissal of Putative 412(i) Class Reaffirmed

05.15.2009

Class Certification Denial Doesn't Divest Court of CAFA

02.15.2009

Court Dismisses Putative 412(i) Class Action

02.15.2009

Fourth Circuit Stymies CAFA Removal

08.15.2008

Annuity Issues in 2008

05.15.2008

Fear of Injury Claim Insufficient

04.03.2008

Survey of Retirement Plan Litigation and "Revenue Sharing" Class Actions

09.15.2007

Unsolicited Faxes Generate Class Action

05.15.2007

Class Settlements Closely Scrutinized

01.15.2007

Rule 68 Offer Doesn't Derail Class Action

Professional & Community Involvement

- American Bar Association
 - Tort Trial and Insurance Practice Section
 - Vice Chair, Life Insurance Law Committee
- Dade County Bar Association
- Defense Research Institute
- Miami-Dade County Public Schools
 - Dade Partners Program

Speaking Engagements

- “Class Action Litigation Update,” Client Focus Forum, Denver, CO (October 2015)
- “2015 Carlton Fields Class Action Survey,” Client Focus Forum, Newport Beach, CA (October 2015)

Credentials

Education

- University of Miami School of Law (J.D., magna cum laude, 2003)
- West Virginia University (B.S./B.A., 1998)

Bar Admissions

- District of Columbia
- Florida

Court Admissions

- U.S. Court of Appeals, Second Circuit
- U.S. Court of Appeals, Fifth Circuit
- U.S. Court of Appeals, Eleventh Circuit
- U.S. District Court, District of Columbia
- U.S. District Court, Middle District of Florida
- U.S. District Court, Southern District of Florida