

UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF CALIFORNIA

Case No. 3:13-cv-02310-GPC-WVG

**IMPORTANT CLASS ACTION NOTICE.**  
**PLEASE READ THIS NOTICE CAREFULLY.**

If you purchased a “Secure Index” annuity from **ING USA ANNUITY AND LIFE INSURANCE COMPANY (also known as VOYA)**, you may be a member of a class of annuity purchasers certified by the United States District Court.

**IF YOU ARE A CLASS MEMBER, THIS LEGAL PROCEEDING MAY AFFECT YOUR RIGHTS.**

**HELP IS AVAILABLE TO ASSIST YOUR UNDERSTANDING OF THIS NOTICE.** Call **1-877-368-6661** toll free for more information.

**What is This Notice and Why is it Important?**

This legal notice has been sent to you by Order of the United States District Court for the Southern District of California (referred to as the “District Court”). The purpose of this notice is to:

1. Notify you that you may be a member of the Class or Classes (defined below) certified by the District Court;
2. Notify you that, for Class Members, the District Court decided certain claims may proceed on a class-wide basis;
3. Explain to you what this legal action is about, how this legal action may affect your rights, and explain what steps you can take to either stay in the case or exclude yourself.

**What is a Class Action?**

A class action is a lawsuit in which one or more individuals bring claims on behalf of other persons or entities. These similarly-situated persons or entities are referred to as a “Class” or “Class Members.” In a class action, the Court resolves certain issues, legal claims and/or defenses for all Class Members in a single action, except for those persons or entities who ask in writing to be excluded from the Class. (See p.4 for more information about excluding yourself from the Class.)

**When was this Class Action Filed?**

On September 25, 2013, California resident and senior citizen Ernest O. Abbit filed a class action lawsuit in the District Court against ING USA Annuity and Life Insurance Company on behalf of himself and a proposed class of all other similarly-situated California senior citizens (age 65 and older) who had purchased “Secure Index Opportunities Plus” annuities.

On March 27, 2014, Mr. Abbit amended his allegations to include two additional “Secure Index” products as part of the Class – the “Secure Index Five” and “Secure Index Seven” products. Mr. Abbit also added a defendant (ING U.S., Inc.), and expanded the proposed Class to include purchasers nationally, regardless of their age. Defendants are referred to herein as “ING/Voya.”

**What is this Class Action About?**

Mr. Abbit alleges that ING/Voya targets retirees and senior citizens with “Secure Index” annuities that contain a complex and hidden derivatives structure, like an options contract. Mr. Abbit alleges that ING/Voya hid the derivatives structure from retirees and seniors, and their sales agents, and also set the pricing parameters of this derivative structure improperly and below the minimum values guaranteed by the annuity contracts.

In other words, the Complaint alleges that people who bought an ING Secure Index annuity did not receive what they were promised by ING/Voya. Mr. Abbit alleges that Class Members are entitled to relief as a result of ING/Voya failing to execute “Secure Index” annuities in a manner that satisfies the annuity contracts’ guaranteed values.

Mr. Abbit also alleges that ING/Voya has violated California’s statutes governing Unlawful, Deceptive and Unfair Business Practices (“UCL”) (Cal. Bus. & Prof. Code § 17200, et seq.); Elder Abuse (Cal. Welf. & Inst. Code § 15600, et seq.); and the California Securities Act (Cal. Corp. Code §25019 and §25401). In addition to seeking recovery of lost contractual values, Mr. Abbit seeks legal fees, costs, and pre-judgment interest on behalf of the Classes and relief under Cal. Civ. Code §3345 for the California Seniors Subclass.

**What Claims are covered in this Class Action?**

The District Court determined that certain claims are appropriate for class-wide adjudication in a single action, depending upon state of residence at the time of purchase. The District Court has not yet ruled on the merits of those claims. Defendants deny these claims have any merit. Detailed information about the certified Classes is discussed further below. A summary of claims is as follows:

<b>State of Residence on Purchase Date</b>	<b>Claim Certified by the District Court</b>
California, Florida, Illinois, Pennsylvania or Texas	Breach of contract.
California	Violation of California’s Unfair Competition Law (Cal. Bus. & Prof.Code, § 17200, et seq.); Violation of the California Securities Act (Cal. Corp. Code §25401; related declaratory relief).
California Senior Citizen (age 65 or older on the purchase date)	Violation of California’s Financial Elder Abuse Law (Cal. Welf. & Inst. Code § 15600, et seq.).

If you wish to pursue any claims that have not been certified by the District Court, you must bring a separate action for relief.

**What Do I Need to Do Now?**

You must make a decision now about whether or not to participate in this Class Action certified by the District Court.

**How Do I Know If I Am a Class Member?**

On November 16, 2015, the District Court certified certain of Plaintiff’s claims for class action treatment for certain **purchasers** of ING/Voya’s “Secure Index” products. If you terminated or surrendered your “Secure Index” contract after the purchase date, you may still be a member of the Class or Classes. The claims certified by the District Court will be prosecuted by Plaintiff on behalf of all individuals/entities as follows:

**The Multi-State Class (residents of California, Florida, Illinois, Pennsylvania or Texas on the annuity purchase date)**

All persons or entities—excluding defendants and their directors, officers, predecessors, successors, affiliates, agents, and employees, as well as the immediate family members of such persons—that, when a resident of either the state of California, Florida, Illinois, Pennsylvania or Texas, purchased a Secure Index fixed index annuity contract from ING USA Annuity and Life Insurance Company within the applicable statute of limitations.

The District Court has certified a claim for the Multi-State Class for breach of contract.

**The California Class**

All persons or entities—excluding defendants and their directors, officers, predecessors, successors, affiliates, agents, and employees, as well as the immediate family members of such persons—that, when a resident of California, purchased a Secure Index fixed index annuity contract from ING USA Annuity and Life Insurance Company within the applicable statute of limitations.

The District Court has certified the following claims for the California Class:

- Violation of California’s Unfair Competition Law under Cal. Bus. & Prof. Code, § 17200, et seq.;
- Declaratory Relief re Qualifying Securities; and
- Violations of the California Securities Act under Cal. Corp. Code §25401.

**The California Seniors Subclass**

All members of the California Class that were age 65 or older on the date of purchase, excluding defendants and their directors, officers, predecessors, successors, affiliates, agents, and employees, as well as the immediate family members of such persons.

The District Court has certified a claim for the California Seniors Subclass relating to ING/Voya’s alleged violation of Financial Elder Abuse Law under Cal. Welf. & Inst. Code § 15600, et seq.

**If I Am a Class Member, What Are My Options?**

If you are a Class Member, you have a right to stay in the case as a Class Member, or you can choose to be excluded from the case. You have to decide this question very soon.

**Option 1. Do Nothing Now. Stay in the Case.**

You have the right to stay in the case as a Class Member and await the outcome of the case. You don't need to do anything if you wish to remain in this case. It will cost you nothing. If you decide to stay in the case as a Class Member, you will be bound by all orders, judgments and decisions of the District Court. At the end of the case, you may receive money, refunds, account credits or enhancements, or other benefits as may be awarded as a result of a trial or settlement reached between Plaintiff and ING/Voya, or you may receive nothing if ING/Voya prevails. You do not need to do anything to keep open the possibility of getting money or benefits from the lawsuit.

If you stay in the case, the Plaintiff will pursue the claims and remedies on your behalf. There is no guarantee that Plaintiff will be successful with these claims and/or will win the case at trial or before. If the Class is awarded money or benefits, you will be notified about how to apply for your share.

The District Court has appointed Mr. Abbit to be representative of the Multi-State Class, the California Class, and the California Seniors Subclass. The District Court has also appointed the following lawyers as counsel for the Multi-State Class, the California Class and the California Seniors Subclass, for those Class Members that decide to stay in the case:

Andrew W. Hutton Hutton Law Group 12671 High Bluff Drive, Suite 130 San Diego, CA 92130 Telephone: (858) 793-3500 Facsimile: (858) 793-3501 ingvoya@law-hutton.com <a href="http://www.huttonlawgroup.com">www.huttonlawgroup.com</a>	Timothy J. Tatro Peter A. Zamoyski Tatro & Zamoyski, LLP 12760 High Bluff Drive, Suite 210 San Diego, CA 92130 Telephone: (858) 244-5032 Facsimile: (858) 847-0032 <a href="http://www.tatrozamoyski.com">www.tatrozamoyski.com</a>
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These lawyers are experienced in handling class action lawsuits, including actions on behalf of purchasers of insurance products. More information about Class Counsel is available on the websites above.

In the event that Plaintiff is successful through trial or settlement, Class Counsel will seek attorney's fees and out-of-pocket costs (such as the cost of hiring financial experts), subject to approval by the District Court. If the District Court grants Class Counsel's request, the attorney's fees and costs will either come from money obtained for the Class and/or will be paid separately by ING/Voya. You will not be personally responsible for any fees, costs or expenses incurred by Class Counsel relating to the prosecution of this case.

Please keep in mind that if you do nothing now and stay in the lawsuit, you will give up your rights to sue ING/Voya separately in another lawsuit about legal claims that are part of this case (described above), and your rights to recover in other cases involving ING/Voya may be impacted. This is true even if your annuity purchase involved unique circumstances or if you have suffered unique problems like emotional distress or pain and suffering. You also forego your right to pursue claims based on alternative legal theories in favor of the theory being pursued in this case. You waive your right to bring a separate lawsuit if you do not exclude yourself from this case. If you stay in the case, you will be legally bound by all of the Orders that the District Court issues in this case, including final judgment.

**Option 2. Hire Your Own Lawyer and Enter an Appearance in the Lawsuit.**

If you would like to remain a Class Member, but do not want to be represented by Class Counsel listed above, you have the right to enter an appearance in this case through your own lawyer at your own expense. To do this, you must file a Notice of Appearance with the Clerk of the District Court, located at United States District Court, Southern District of California, 333 West Broadway, Suite 420, San Diego, CA 92101. You will be responsible for all legal fees and costs associated with your Notice of Appearance. If you do not enter an appearance or exclude yourself, your interests in this lawsuit will be represented by the Plaintiff and Class Counsel listed above at no charge to you.

**Option 3. Exclude yourself from the Case.**

Alternatively, you have the right to not be part of this lawsuit by excluding yourself or "opting out" of the Class. If you wish to exclude yourself, you must do so on or before July 20, 2016 as described below. If you exclude yourself from the Class, you give up your right to receive any money or other benefits awarded in this case, and you will not be bound by any judgments or other orders of the District Court, whether favorable or unfavorable to you and/or the Class. However, you will keep your right to sue ING/Voya separately in another lawsuit if you choose to pursue one.

If you wish to pursue your own lawsuit against ING/Voya, you will need to exclude yourself and hire and pay for your own lawyer. You will also need to bring evidence to prove your own claims. If you choose this option, you should talk to a lawyer soon because your claims may be subject to a statute of limitations which sets a deadline for filing the lawsuit within a certain period of time after purchasing a fixed index annuity contract with ING/Voya.

**IMPORTANT:** Regardless of whether you stay in the lawsuit or exclude yourself from the Class, your contractual rights under your “Secure Index” annuity contract with ING/Voya will not be affected.

**How Do I Exclude Myself from the Class?**

To exclude yourself from this lawsuit and/or preserve your right to bring a separate case, you must make a request to be excluded in writing and mail it to:

Abbit v. ING USA Annuity and Life Insurance Co. and ING U.S., Inc.  
c/o Gilardi & Co. LLC  
P.O. Box 6002  
Larkspur, CA 94977-6002

All requests for exclusion must be postmarked on or before July 20, 2016.

Your request for exclusion must contain all of the following:

1. The name of the lawsuit;
2. Your full name;
3. Your current address;
4. Your annuity contract number;
5. A clear statement that you wish to be excluded from the Class, such as: “I request exclusion from the Class”; and
6. Your signature.

Class Counsel will file your request for exclusion with the District Court. If you are signing on behalf of a Class Member as a legal representative (such as an estate, trust or incompetent person), please include your full name, contact information, and the basis for your authority.

**IF YOU DO NOT EXCLUDE YOURSELF FROM THE CLASS BY THE POSTMARK DEADLINE OF JULY 20, 2016, YOU WILL REMAIN PART OF THE CLASS AND WILL BE BOUND BY THE ORDERS OF THE COURT IN THIS LAWSUIT, INCLUDING FINAL JUDGMENT, WHETHER OR NOT IT IS FAVORABLE TO PLAINTIFF AND THE CLASS.**

**How Do I Find Out More About This Lawsuit?**

If you have any questions about the lawsuit or any matter raised in this notice, please call toll-free at **1-877-368-6661** or go to [www.INGVOYASecureIndexLitigation.com](http://www.INGVOYASecureIndexLitigation.com).

You may also contact Class Counsel at their websites where you may:

1. Submit a form requesting additional information;
2. View a copy of the complaints filed by Plaintiff; and
3. View a copy of the Court’s Class Certification Order.

Complete copies of the documents filed in this lawsuit may be examined and copied at any time at the United States District Court, Southern District of California, 333 West Broadway, Suite 420, San Diego, CA 92101.

**PLEASE DO NOT TELEPHONE OR CONTACT THE DISTRICT COURT OR THE CLERK OF THE DISTRICT COURT REGARDING THIS NOTICE**

**IT IS SO ORDERED, HON. GONZALO P. CURIEL, U.S. DISTRICT COURT JUDGE**

**DATED: June 3, 2016**