

FEB 27 2009

RECEIVED ORAL ARGUMENT SCHEDULED FOR FRIDAY, MAY 8, 2009  
No. 09-1021 (consolidated with 09-1056)

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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AMERICAN EQUITY INVESTMENT LIFE  
INSURANCE COMPANY, *et al.*,  
*Petitioners*

v.

SECURITIES AND EXCHANGE COMMISSION,  
*Respondent.*

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MOTION OF *AMICUS*, ALLIANZ LIFE INSURANCE COMPANY OF  
NORTH AMERICA, FOR LEAVE TO FILE MEMORANDUM  
IN SUPPORT OF PETITIONERS

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Pursuant to Rule 29 of the Federal Rules of Appellate Procedure and Rule 29 of the Circuit Rules of the United States Court of Appeals for the District of Columbia Circuit, Allianz Life Insurance Company of North America (“Allianz”) respectfully submits this Motion for Leave to file the accompanying brief as *amicus curiae* in support of the position of the Petitioners, American Equity Life Insurance Company, *et al.* A copy of the proposed brief is attached to this Motion.

1. In addition to life insurance and other financial services, Allianz is a leader in the annuity industry. Allianz is engaged in the marketing, sale, and administration of annuity products to consumers on a nationwide basis and offers annuities to countless consumers each day. On its 2008 statutory state filing, Allianz reported premiums of more than \$8 billion, assets of more \$66 billion, policy holder reserves of more than \$51 billion and benefits paid of more than \$5 billion. Stated plainly, this Court should allow Allianz’s argument because: (1) the issues which Allianz seeks to address have not been previously addressed by the parties or by *amici* and represent a different but important perspective and legal analysis; (2) Allianz has a strong interest in such issues, and will be significantly affected by the outcome of this case; and (3) because of Allianz’s position in the annuity industry, it has specialized expertise, knowledge and experience which may be of assistance to this Court in addressing the Petitioners’ case.

2. Allianz is subject to regulation by state and federal legislation, state securities regulations, state insurance departments and, most importantly, federal securities regulations adopted by the Securities and Exchange Commission (“SEC”). Due to its prominent position in the annuity industry, Allianz has a strong interest in, and has maintained close familiarity with, the SEC’s proposal, consideration and adoption of Rule 151A.

3. The *amicus* brief proffered by Allianz should be permitted because the arguments and information on industry practice contained therein have not been previously addressed. Allianz asserts that the SEC’s adoption of Rule 151A contradicts three different standards declared by the United States Supreme Court, as well as statements the SEC has made to the Supreme Court in applying those standards. These standards have existed for years and the annuity industry has built regulatory infrastructure within member companies to deal specifically with the standards and regulations as they existed prior to the enactment of Rule 151A. Moreover, as Allianz points out, the SEC’s administrative process in the adoption of Rule 151A failed to take into account the panoply of existing state regulation applicable to index annuities.

4. In its Order of February 3, 2009, which granted expedited briefing, this Court scheduled the filing date for briefs of *amici* in support of Petitioners for February 20, 2009. According to Federal Rule of Appellate Procedure 29(e), this

Court “may grant leave for later filing” and should do so in this case. *See Berger v. Iron Workers Reinforced Rodmen, Local 201*, No. 95-7103, 1996 WL 135155, at \*1 (D.C. Cir. Feb. 26, 1996) (granting motion for leave to file *amicus curiae* untimely brief); *Reinhardt v. Lincoln County*, 482 F.3d 1225, 1232 (10th Cir. 2007). The unique and important point of view contained in Allianz’s proposed brief will be especially helpful to this Court’s ultimate analysis on this crucial matter as it is borne out of the expertise, knowledge and experience of one of the largest participants in this country’s annuity marketplace. If the Court permits this filing, it would not prejudice the SEC’s ability to file its initial brief. In fact, the SEC may indeed benefit from hearing the viewpoint of a leading member of the annuity industry. This *amicus* brief is offered within a week of the deadline imposed by the expedited briefing schedule and still offers the SEC almost a month to respond to the arguments contained therein.

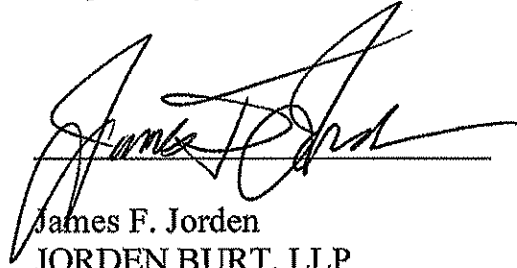
WHEREFORE, Allianz respectfully requests leave to file the *amicus* brief accompanying this motion.

February 27, 2009

Respectfully submitted,

February 27, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James F. Jorden", is written over a horizontal line. The signature is stylized and cursive.

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## CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the foregoing Brief of Allianz Life Insurance Company of North America as *Amicus Curiae* in support of the position set forth by American Equity Life Insurance Company, *et al.*, were sent on February 26, 2009 to:

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