

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/28/16

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
JOHN W. WITTMAN, on behalf of the Voith  
Retirement Savings Plan for Bargaining Unit  
Employees and all other similarly situated ERISA-  
covered employee pension benefit plans,

Plaintiff,

-against-

NEW YORK LIFE INSURANCE COMPANY,

Defendant.  
----- X

ALVIN K. HELLERSTEIN, U.S.D.J.:

ORDER TO SHOW CAUSE

15 Civ. 9596 (AKH)

A status conference was held on November 18, 2016.

Plaintiff's claim is that defendant, a fiduciary, illegally made profits from transactions without giving the full benefit from those transactions to plaintiffs, the beneficiaries. Defendant denied that this was so, and represented at the status conference that it had complied with the Court's instruction to provide plaintiff with full documentation showing that this "spread" theory of the case is unfounded. Plaintiff conceded that the documents so showed and that there was no "spread" between any internal rate of return and the rate of return owed to the beneficiaries. Nevertheless, plaintiff insists that defendant made an improper profit from the group annuity contracts at issue. Plaintiff was unable to explain how defendants could have profited if, as defendant's documents show, there was no "spread."

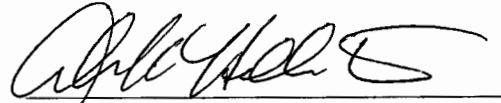
Clearly, without an amendment, the complaint is insufficient and must be dismissed. I set the following procedure to test if plaintiff, by amendment, could state a legally sufficient and plausible claim for relief. By December 9, 2016, Plaintiff shall show that it can state a meritorious claim for relief, and shall identify the documents providing sufficient confirmation of its claim. By December 23, 2016, defendant shall file its opposition and, by

January 5, 2017, plaintiff shall file his reply. The Court will then determine whether additional limited discovery is appropriate, or if the case should be dismissed.

SO ORDERED.

Dated:

November 28, 2016  
New York, New York



---

ALVIN K. HELLERSTEIN  
United States District Judge