

1 3. The Examiners reviewed 404 sales and advertising materials, one sales
2 illustration computer program, 32 variable annuity forms, four HIV-related test consent
3 forms, and six individual variable life insurance policy forms used by the Company
4 during the time frame of the examination and found as follows:

5 a. Allmerica used an agent sales training script regarding variable life
6 insurance, form number AS-465(1/00), which might be construed to imply that the
7 agent was selling a retirement plan that was distinct from a life insurance policy.

8 b. Allmerica used advertising form AS-744(2/00) that compared the
9 pre-tax accumulated value of an annuity to the value of a taxable investment (displayed
10 net of taxes payable) without reflecting in the comparison the annuity's after-tax value.

11 c. Allmerica used four HIV testing consent forms, form numbers
12 27(3/95), 07127(3/95), 07677AZ(3/95) and 07677AZ(6/93), without filing the forms for
13 review and approval by the Director.

14 d. Allmerica failed to identify the owner of the contract on the cover
15 page of three variable life policy forms (form numbers 1018-93, 1023-93, and 1026-94).

16 e. Allmerica failed to include nine life application forms in its Exempt
17 Forms listing filed with the Department.

18 f. Allmerica failed to include sufficient questions in three variable life
19 application forms, form numbers AS-158-95, AS-401 8/98 and AS-401 4/99, which
20 would enable the insurer to determine the suitability of variable life insurance for the
21 applicant.

22 4. The Examiners reviewed 58 of 95 standard and non-standard variable life
23 insurance policy files for policies that were issued during the time frame of the
24 examination and found as follows:

25 a. In two files, Allmerica failed to:

1 i. Obtain the signed consent from the applicant for an HIV-
2 related test prior to conducting the test, or on a form not used by the Company.

3 ii. Provide an applicant who was the subject of an adverse
4 underwriting decision with the specific reason for the decision in writing.

5 b. In 11 files, Allmerica failed to obtain the signed consent from the
6 applicant for an HIV-related test prior to conducting the test, or on a form not used by
7 the Company.

8 c. In one file, Allmerica failed to provide an applicant who was the
9 subject of an adverse underwriting decision with the specific reason for the decision in
10 writing.

11 5. The Examiners reviewed 11 of 11 life insurance paid claim files and 51 of
12 96 annuity paid claim files for claims processed by the Company during the time frame
13 of the Examination and found as follows:

14 a. In four files, Allmerica failed to provide claimants with claim forms,
15 instructions and reasonable assistance within 10 working days of receiving notice of
16 claim.

17 b. In one file, Allmerica underpaid a life claim \$48.81 by failing to pay
18 the correct amount of interest due according to company standards. In another file,
19 Allmerica failed to pay one annuity claimant interest on an annuity settlement paid 99
20 days after receipt of proof of loss. The life claimant has been paid \$48.81. The annuity
21 claimant has been paid \$2,887.13.

22 **CONCLUSIONS OF LAW**

23 1. Allmerica violated A.R.S. §20-444(A) by using one piece of misleading
24 advertising and one piece of misleading agent-training materials.

25 2. Allmerica violated A.A.C. R20-6-1203(C) by failing to file its HIV testing

1 consent form for review and approval.

2 3. Allmerica violated A.R.S. §20-2604(D)(1)(f) by failing to identify the policy
3 owner on the cover page, or a page that corresponds to the cover page, of variable life
4 insurance policies.

5 4. Allmerica violated A.A.C. R20-6-218(B)(1) by failing to include life
6 application forms on its Exempt Forms listing filed with the Department.

7 5. Allmerica violated A.R.S. §20-2608(3) by not including sufficient
8 questions in its variable life insurance application forms, utilized by unaffiliated
9 broker/dealers to allow the insurer to determine the applicant's suitability for the
10 coverage.

11 6. Allmerica violated A.R.S. §20-448.01(B) by failing to obtain the signed
12 written consent from applicants for HIV-related testing prior to having the applicant
13 undergo the test, or by obtaining consent on a form not used by the Company.

14 7. Allmerica violated A.R.S. §20-2110(A) by failing to provide some
15 applicants, who were subject to an adverse underwriting decision, with the specific
16 reasons for the decision in writing or that the decision would be provided upon request.

17 8. Allmerica violated A.R.S. §20-461(A)(2) and A.A.C. R20-6-801(E)(4) by
18 failing to provide some claimants with claim forms, instructions and reasonable
19 assistance within 10 working days of receiving notice of claim.

20 9. Grounds exist for the entry of the following Order, in accordance with
21 A.R.S. §§ 20-220, 20-456, and 20-2117.

22 **ORDER**

23 **IT IS ORDERED THAT:**

24 1. Allmerica shall cease and desist from:

25 a. Using any sales scripts or advertising to sell variable life insurance

1 that imply that the producer is selling a retirement plan instead of life insurance when
2 such is not the case.

3 b. Using advertising that compares the pre-tax accumulated value of
4 an annuity to the value of a taxable investment without reflecting in the comparison the
5 annuity's after-tax value.

6 c. Failing to file HIV testing consent forms with the Director for review
7 and approval.

8 d. Failing to identify the owner of variable life policy forms on the
9 policy cover page, or a page that corresponds to the cover page.

10 e. Failing to obtain in conjunction with variable life applications, taken
11 by agents associated with unaffiliated broker/dealers, sufficient questions to enable the
12 insurer to determine the suitability of variable life insurance for the applicant.

13 f. Failing to obtain the signed written consent from all applicants prior
14 to administering HIV-related tests, and obtaining consent on forms not used by the
15 Company.

16 g. Failing to provide all applicants who are subject to an adverse
17 underwriting decision of the specific reason for the decision or that the specific reason
18 will be provided upon request.

19 h. Failing to provide all claimants with claim forms, instructions and
20 reasonable assistance within 10 working days of receiving notice of claim.

21 2. Within 90 days of the filed date of this Order, Allmerica shall submit to the
22 Arizona Department of Insurance, for approval, evidence that corrections have been
23 implemented and communicated to the appropriate personnel, regarding all of the
24 issues outlined in Paragraph 1 of the Order section of this Consent Order. Evidence of
25 corrective action and communication thereof includes, but is not limited to, memos,


1 bulletins, E-mails, correspondence, procedures manuals, print screens, and training
2 materials.

3 3. The Department shall be permitted, through authorized representatives,
4 to verify that Allmerica has complied with all provisions of this Order.

5 4. Allmerica shall pay a civil penalty of \$26,000.00 to the Director for deposit
6 in the State General Fund in accordance with A.R.S. § 20-220(B). The civil penalty
7 shall be provided to the Market Conduct Examinations Section of the Department prior
8 to the filing of this Order.

9 5. The Report of Examination of the Market Conduct Affairs of Allmerica as
10 of June 26, 2001, including the letter submitted in response to the Report of
11 Examination, shall be filed with the Department upon the filing of this Order.

12
13 DATED at Phoenix, Arizona this 23rd day of August, 2002.

14 

15
16 Charles R. Cohen
17 Director of Insurance

17
18
19
20

1 **CONSENT TO ORDER**

2 1. Allmerica Financial Life Insurance and Annuity Company has reviewed the
3 foregoing Order.

4 2. Allmerica Financial Life Insurance and Annuity Company admits the
5 jurisdiction of the Director of Insurance, State of Arizona, admits the foregoing Findings
6 of Fact, and consents to the entry of the Conclusions of Law and Order.

7 3. Allmerica Financial Life Insurance and Annuity Company is aware of the
8 right to a hearing, at which it may be represented by counsel, present evidence, and
9 cross-examine witnesses. Allmerica Financial Life Insurance and Annuity Company
10 irrevocably waives the right to such notice and hearing and to any court appeals
11 related to this Order.

12 4. Allmerica Financial Life Insurance and Annuity Company states that no
13 promise of any kind or nature whatsoever was made to it to induce it to enter into this
14 Consent Order and that it has entered into this Consent Order voluntarily.

15 5. Allmerica Financial Life Insurance and Annuity Company acknowledges
16 that the acceptance of this Order by the Director of the Arizona Department of
17 Insurance is solely for the purpose of settling this matter and does not preclude any
18 other agency or officer of this state or its subdivisions or any other person from
19 instituting proceedings, whether civil, criminal, or administrative, as may be appropriate
20 now or in the future.

21 6. Mark A. Hug, who holds the office of President at
22 Allmerica Financial Life Insurance and Annuity Company is authorized to enter into this
23 Order for it and on its behalf.

24 **ALLMERICA FINANCIAL LIFE INSURANCE AND ANNUITY COMPANY**

25 8/21/2007 By: 

1 COPY of the foregoing mailed/delivered
2 This 26th day of August 2002, to:

3 Sara Begley
4 Deputy Director
5 Mary Butterfield
6 Assistant Director
7 Consumer Affairs Division

8 Paul Hogan
9 Chief Market Conduct Examiner
10 Market Conduct Examinations Section

11 Deloris E. Williamson
12 Assistant Director
13 Rates & Regulations Division

14 Steve Ferguson
15 Assistant Director
16 Financial Affairs Division

17 Alan Griffieth
18 Chief Financial Examiner
19 Financial Affairs Division

20 Alexandra Shafer
21 Assistant Director
22 Life and Health Division

23 Terry Cooper
24 Manager
25 Fraud Unit

DEPARTMENT OF INSURANCE
2910 North 44th Street, Second Floor
Phoenix, AZ 85018

Abigail Armstrong, Assistant V/P and Counsel
Allmerica Financial Life Insurance and Annuity Company
440 Lincoln Street
Worcester, MA 06153

