

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VLADIMIR KUSHNIR, Individually and as	:	CIVIL ACTION
Trustee of the V-4 Management LLC Defined	:	
Benefit Pension Plan & Trust, and	:	NO. 11-7701
V-4 MANAGEMENT, LLC,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
AVIVA LIFE & ANNUITY COMPANY,	:	
Defendant/Third Party Plaintiff,	:	
	:	
v.	:	
	:	
JEFFREY CUNNING; ROGER FULLER;	:	
SCOTT RIDGE; and T.J AGRESTI,	:	
Third Party Defendants.	:	

ORDER

AND NOW, this 21st day of August, 2013, upon consideration of Defendant Aviva Life and Annuity Company’s Partial Motion to Dismiss (Document No. 46, filed June 14, 2013), Plaintiffs’ Brief in Opposition to Defendant’s Motion to Dismiss (Document No. 47, filed August 1, 2013), and Defendant Aviva Life and Annuity Company’s Reply in Support of its Partial Motion to Dismiss (Document No. 49, filed August 8, 2013), for the reasons set forth in the Memorandum dated August 21, 2013, **IT IS ORDERED** as follows:

1. Defendant’s motion is **GRANTED WITHOUT PREJUDICE** for failure to comply with the particularity requirement of Fed. R. Civ. P. 9(b) as to those parts of Counts I and II of the Amended Complaint which address the legality and effectiveness of the use of the Policy identified as Indianapolis Life Policy No. 000100098974 to fund the 26 U.S.C. § 412(i) plan. Plaintiffs are granted leave to file a second amended complaint consistent with the Memorandum dated August 21, 2013, on or before September 4, 2013 if warranted by the facts.

2. Defendant's motion is **GRANTED** as Count III of the Amended Complaint, and Count III of the Amended Complaint is **DISMISSED WITH PREJUDICE**. This dismissal does not affect plaintiffs' request for relief in the form of equitable rescission in Counts I and II.

3. Defendant's motion is **DENIED** in all other respects.

IT IS FURTHER ORDERED that a scheduling conference will be conducted in due course.

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.