



Recent Trends and Developments in Life and Annuity Litigation

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McHugh v. Protective Life Ins. Co., 494 P.3d 24 (Cal. 2021).

CAL. INS. CODE §§ 10113.71 - 10113.72 - Effective January 1, 2013

1. Each policy must include a 60-day grace period.
2. Must be an additional notice warning of termination at least 30 days before a policy is terminated for insufficient funds, and a notice of the need for additional premiums to be paid within 30 days of entering the grace period.
3. Must be an annual notice of the right to designate additional individuals to receive grace notices or notices of missed payments

Do these new regulations apply to policies issued before January 1, 2013?

***McHugh v. Protective Life Ins. Co.*, 494 P.3d 24 (Cal. 2021).**

- Before these statutory provisions took effect on January 1, 2013, regulators with the California Department of Insurance told the ACLI that the regulations would only apply to policies issued on or after January 1, 2013.
- But in 2021, the California Supreme Court held that, despite this prior guidance from the California DOI, the regulations also apply to policies issued prior to January 1, 2013, sparking litigation against insurance companies throughout the state.

***McHugh v. Protective Life Ins. Co.*, 494 P.3d 24 (Cal. 2021).**

- *Thomas v. State Farm*, 2021 WL 4596286 (9th Cir. Oct. 6, 2021)
 - unreported 9th Circuit decision,
 - if the regulations have not been followed, then an impacted terminated policy will be deemed to still be in force.
- Numerous federal district courts followed this holding – an impacted terminated policy will be deemed to still be in force.
 - *Small v. Allianz Life*, 20-CV-01944 (C.D. Cal. Aug. 25, 2023) (J. Terry Hatter)
 - *Grundstrom v. Wilco Life*, 2020-CV-3445 (N.D. Cal. Sept. 5, 2023) (J. Maxine Chesney)
 - *Moriarty v. American General*, 2023 WL 5211632 (S.D. Cal. Aug. 14, 2023)
 - *Siino v. Forester Life*, 2023 WL 4410948 (N.D. Cal. July 7, 2023)

***McHugh v. Protective Life Ins. Co.*, 494 P.3d 24, 27–28 (Cal. 2021).**

- Several district courts granted class certification:
 - *Bentley v. United of Omaha Life Ins. Co.*, 2018 WL 3357458 (C.D. Cal. May 1, 2018)(J. Gee)
 - *Farley v. Lincoln Benefit Life Co.*, 2023 WL 3007413 (E.D. Cal. April 18, 2023)
 - *Small v. Allianz Life Ins. Co.*, 2023 WL 5811903 (C.D. Cal. Aug. 25, 2023)(J. Hatter)
- There were typically two subclasses:
 - Policyholders who are still living – the plaintiffs’ sought a judicial declaration or injunctive relief holding that the lapsed policies are still in force (or some other coverage relief)
 - Beneficiaries of deceased policyholders (insureds) – seeking money damages for the death benefit

***McHugh v. Protective Life Ins. Co.*, 494 P.3d 24, 27–28 (Cal. 2021).**

There were several district court cases that had denied class certification.

- *Siino v. Foresters Life*, 340 F.R.D. 157 (N.D. Cal. Jan. 12, 2022)
- *Moriarty v. American General*, 2022 WL 6584150 (S.D. Cal. Sept. 27, 2022)
- *Steen v. American Nat'l Ins. Co.*, 2023 WL 4004192 (C.D. Cal. June 14, 2023)(J. Wright)
- *Poe v. Northwestern Mut. Life Ins. Co.*, 2023 WL 5251875 (C.D. Cal. Aug. 14, 2023) (J. Garnett)
- *Nieves v. Omaha Life Ins. Co.*, 2023 WL 2705836 (S.D. Cal. March 28, 2023)

***Small v. Allianz Life Ins. Co. of N. Am.*, 122 F.4th 1182 (9th Cir. 2024)**

Ninth Circuit reverses class certification:

- Class certification of both living former policyholders and beneficiaries of deceased policyholders (insureds).
- The Plaintiff was a beneficiary of a deceased insured.
- Because the statutes do not provide an independent cause of action, the Plaintiff still must prove the elements of a breach of contract.
- The Court reversed class certification under injunctive and declaratory relief under Rule 23(b)(2) for living policyholders and damages for beneficiaries of deceased policyholders under Rule 23(b)(3).
- Plaintiff could not satisfy: adequacy and typicality under Rule 23(a); predominance under 23(b)(3); or indivisible relief under Rule 23(b)(2).
- The Court ruled that Plaintiff was an inadequate representative of the living insured subclass or policyholders who intentionally allowed policy to lapse.

***Small v. Allianz Life Ins. Co. of N. Am.*, 122 F.4th 1182 (9th Cir. 2024)**

The Causation element:

- Plaintiff must prove the element of causation – that the breach resulted in damages.
- Plaintiff alleged that her policy lapsed inadvertently because of no notice.
- However, there was evidence that other putative class members intentionally allowed their policies to terminate.
- For example, term policyholders may have decided to let their policy lapse at the end of the term guaranty period. Likewise, some policyholders may have wanted to replace their policies with less expensive policies.
- The Court held that causation could not be adjudicated on a classwide basis, because “whether policyholders knowingly let their policies lapse due to nonpayment is an individualized inquiry....”

***Farley v. Lincoln Ben. Life Co.*, 2025 WL 2487767 (9th Cir. Aug. 29, 2025)**

Ninth Circuit again reverses class certification:

- Policy lapsed for an insured still living.
- Class certification of only injunctive / declaratory relief under Rule 23(b)(2) giving lapsed policyholders the option to reinstate their policies – not monetary damages.
- Followed in the footsteps of *Small v. Allianz*, finding that individualized issues precluded findings of typicality and adequacy under Rule 23(a) and indivisible relief under 23(b)(2).
- Plaintiff could not establish typicality and adequacy for putative class members who: (1) were beneficiaries of deceased insureds; or (2) had intentionally let their policies lapse.

Other Subsequent Ninth Circuit decisions:

- *Moriarty v. American General Life Ins.*, 2025 WL 687960 (9th Cir. March 4, 2025)
 - vacating summary judgment for plaintiff, noting that “causation” requires that plaintiff prove the insurer’s statutory violation was the but-for cause of the policy lapse or loss of coverage, and remanding for reconsideration in light of *Smalls*.
- *Poe v. Northwestern Mutual Life Ins. Co.*, 2025 WL 687964 (9th Cir. March 4, 2025)
 - affirming denial of class certification under *Small*, vacating summary judgment in favor of plaintiff because the district court did not consider whether the statutory violation caused harm (causation), and remanding for further proceedings consistent with *Smalls*.
 - filed petition for writ of certiorari on September 8, 2025, and distributed for conference on October 10, 2025
- *Siino v. Foresters Life Ins. & Ann. Co.*, 133 F.4th 936 (9th Cir. April 1, 2025)
 - affirming summary judgment for plaintiff as to declaratory relief that the insurer violated the statutes;
 - reversing the court’s summary judgment in favor of plaintiff finding that the policy remained valid and had not lapsed because the plaintiff had not established the causation element.

Cost of Insurance & Non-Guaranteed Element Litigation

- Continue to see new activity in the class action context
- Cost of Insurance (COI) Provisions
 - Following an increase in COI rates
 - Complaining of original COI rates
 - Complaining that COI rates have not been lowered
- Other Non-Guaranteed Elements -- Taxes & Interest crediting rates

Scope of Claims

- Claim for Breach of Contract after an increase in COIs
 - Alleging that the insurer considered factors that were not expressly provided for in the COI rate provision
 - Alleging that the policy language is ambiguous and therefore should be construed in favor of the policyholder under the doctrine of *contra proferentum*.
- Other Breach of Contract theories
 - “Improving Mortality Expectations” theory -- insurer should have lowered COI rates because of *improving mortality*
 - Insurer’s *initial* rates were contrary to the policy language.
- Breach of the Duty of Good Faith & Fair Dealing
 - Frustrated the purpose of the contract

Outcomes impacted by (1) the specific policy language and (2) venue

1. Mortality Focused Policy Forms
2. Multiple Factor Policy Forms
3. Silent / Discretionary Policy Forms

Mortality Focused Policy Forms

- Mortality focused COI provision:
 - “Current monthly cost of insurance rates **will be determined** by the Company **based on its expectation as to future mortality experience**. Any change in such rates will apply uniformly to all members of the same **age, sex, and premium class**.” (*Vogt v. State Farm*)
- Question # 1: Litigation looks to what factors an Insurer can look to in setting or changing COI rates
 - Plaintiffs argue the “based on” factors are exclusive
 - Insurers argue that “based on” is non-exclusive
- Question # 2: Plaintiffs ask whether the “will be determined” require annual reviews and changes to COI rates

Multiple Factor Policy Language

Fleischer v. Phoenix Life, 18 F. Supp. 3d 456 (S.D.N.Y. 2014).

“The Cost of Insurance Charge for a specific Policy Month is the charge for the Net Amount of Risk. The charge for the Net Amount at Risk is an amount equal to the per dollar cost of insurance rate for that month multiplied by the Net Amount at Risk, and **such rates will be based on our expectations of future mortality, persistency, investment earnings, expense experience, capital and reserve requirements, and tax assumptions.**”

Silent / Discretionary Policy Language

Anderson v. Wilco Life Ins. Co., 17 F.4th 1339 (11th Cir. 2021)

“The guaranteed monthly cost of insurance rates for the policy are based on the insured’s sex, attained age, and premium class on the date of issue....These rates are shown on the Policy Data Page.

Current monthly cost of insurance rates **will be determined** by the Company. The current monthly cost of insurance rates will not be greater than the guaranteed monthly cost of insurance rates which are listed on the Policy Data Page.”

Baymiller v. Guarantee Mut. Life Co. , 2000 WL 1026565 (C.D. Cal. May 3, 2000)

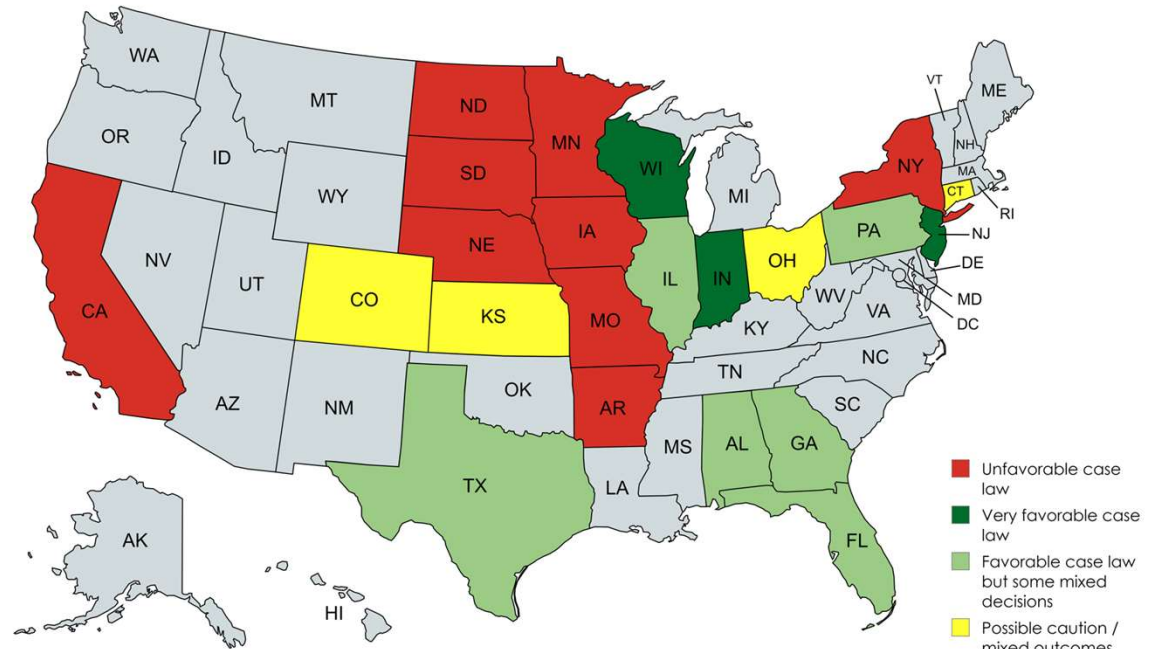
Rates “**may** be applied . . . in the amount and by the method *determined by the Company.*” The company “**may** use cost of insurance rates that are lower than the guaranteed rates.”

Norem v. Lincoln Benefit Life Ins. Co., 737 F.3d 1145, 1150 (7th Cir. 2013)

“The cost of insurance rate is based on the insured’s sex, issue age, policy year, and payment class. **The rates will be determined by us**, but they will never be more than the guaranteed rates shown on Page 5.”

Mixed and Conflicting Outcomes in Different Venues

- Some wins for Plaintiffs / Some wins for Insurers
- Dependent on the venue
- Highly dependent on the policy language



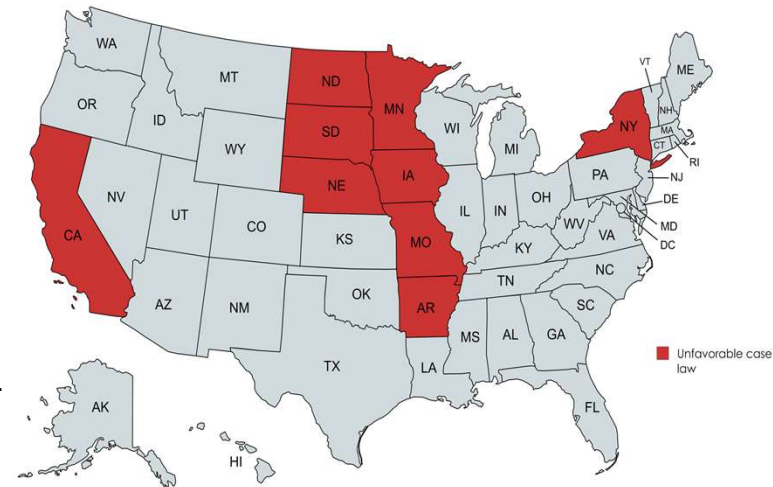
Venue: Unfavorable Rulings

Eighth Circuit

- *Vogt v. State Farm*, 963 F.3d 753, 761 (8th Cir. 2020)
- *Meek v. Kansas City Life Ins. Co.*, 126 F.4th 577 (8th Cir. 2025)
- *PHT Holding II LLC v. N. Am. Co. for Life & Health Ins.*, 2023 WL 3714746 (S.D. Iowa May 27, 2023)
- *Handorf v. Transamerica Life Ins. Co.*, 780 F. Supp. 3d 810 (N.D. Iowa 2025)
- *Handorf v. Transamerica Life Ins. Co.*, 349 F.R.D. 540 (N.D. Iowa 2025)

New York

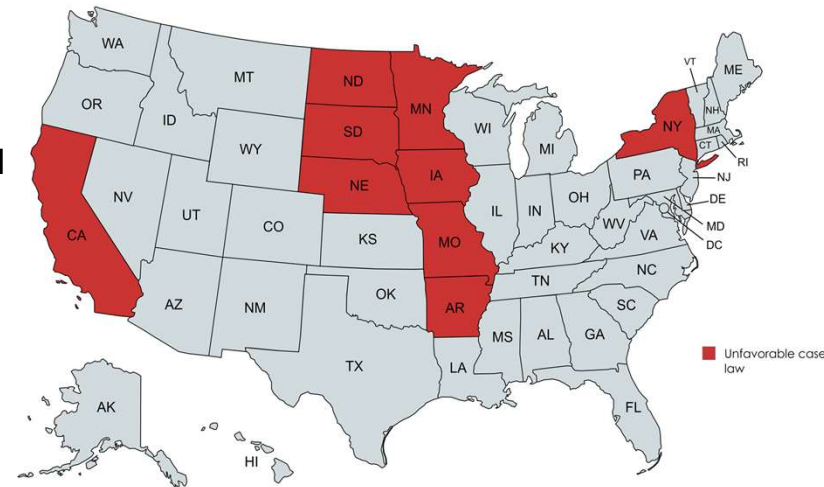
- *Fleischer v. Phoenix Life*, 18 F. Supp. 3d 456 (S.D.N.Y. 2014).
- *U.S. Bank v. PHL Var. Life*, 2014 WL 2199428 at *11 (S.D.N.Y. May 23, 2014)
- *Hanks v. Lincoln Life*, 330 F.R.D. 374 (S.D.N.Y. Mar. 13, 2019)
- *In re AXA Equitable Life COI Liti.*, 2020 WL 4694172 (S.D.N.Y. Aug. 13, 2020)
- *Vida Longevity Fund, LP v. Lincoln Life & Ann. Co. of New York*, 2024 WL 1349221 (S.D.N.Y. Mar. 29, 2024)
- *Martin v. Brighthouse Life Ins. Co.*, 2025 WL 2731710 (S.D.N.Y. Sept. 25, 2025)
- *Bella v. Wilton Reassurance Life of New York*, 2025 WL 1616851 (S.D.N.Y. June 5, 2025)



Venue: Unfavorable Rulings

- **California**

- *Bally v. State Farm*, 2021 WL 1668004 (N.D. Cal. Apr. 28, 2021) (certifying class)
- *Feller v. Transamerica Life Ins. Co.*, 2016 WL 6602561, at *12 (C.D. Cal. Nov. 8, 2016)
- *Dean v. United of Omaha*, 2007 WL 7079558 (C.D. Cal. Aug. 27, 2007)
- *Yue v. Conseco Life*, 2012 WL 1101275 (C.D. Cal. Apr. 2, 2012) (withdrawn); 2011 WL 210943 (C.D. Cal. Jan. 19, 2011) (withdrawn).
- *But see Baymiller v. Guarantee Mut. Life*, 2000 WL 1026565 (C.D. Cal. May 3, 2000)



Venue: Favorable Rulings

• Seventh Circuit

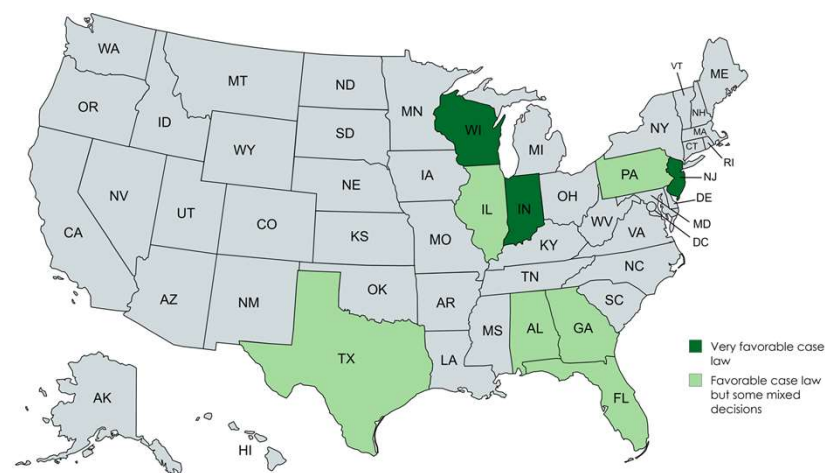
- *Norem v. Lincoln Benefit Life Co.*, 737 F.3d 1145, 1150 (7th Cir. 2013))
- *Thao v. Midland Nat'l Life Ins. Co.*, 549 F. App'x 534 (7th Cir. Dec. 13, 2013).
- *Maxon v. Sentry Life Ins. Co.*, 2019 WL 4540057 (W.D. Wisc. Sept. 19, 2020)
- **But see** *Lee v. Allstate Life*, 838 N.E.2d 15 (Ill. Ct. App. 2005) (certifying class action)

• New Jersey

- *Coffman v. Pruco Life Ins. Co.*, 2011 WL 4550152, at *3 (D.N.J. Sept. 29, 2011)

• Eleventh Circuit

- *Slam Dunk I, LLC v. Connecticut Gen. Life Ins. Co.*, No. 20-13706, 2021 WL 1575162 (11th Cir. Apr. 22, 2021)
- *Anderson v. Wilco Life Ins. Co.*, 17 F.4th 1339 (11th Cir. 2021)
- **Mixed result:** *Advance Trust & Life Escrow Services, LTA v. Protective Life Ins. Co.*, 2024 WL 878017 (11th Cir. Mar. 1, 2024)



Venue: Caution is Advised

- **Colorado**

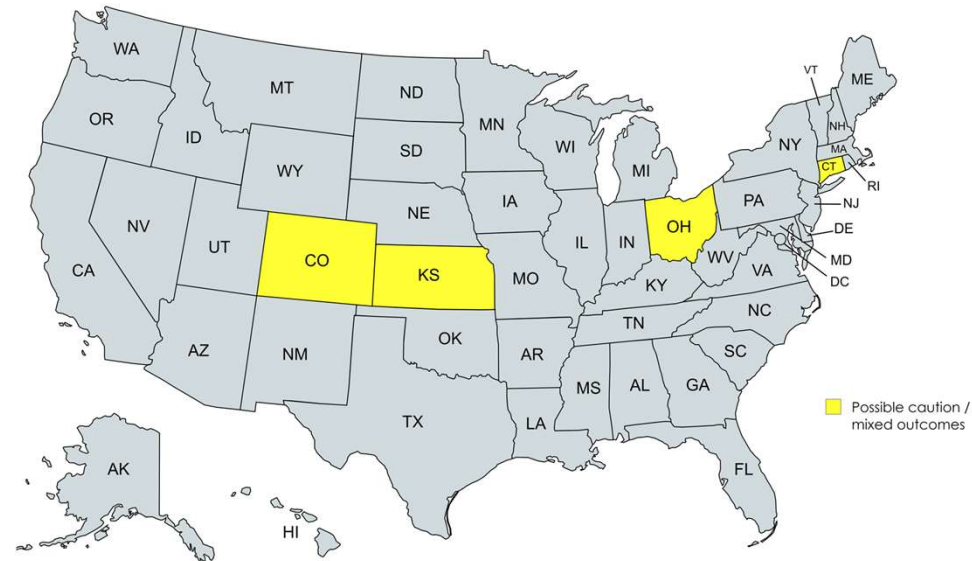
- *Advance Trust & Life Escrow Services, LTA v. Security Life of Denver Ins. Co.*, 2021 WL 62339 (D. Colo. Jan. 6, 2021) (certifying class)

- **Connecticut**

- *Palumbo v. Nationwide Life*, 2017 WL 80405 *3 (D. Conn. Jan. 9, 2017) (denying motion to dismiss)
- *Glover v. Conn. General Life Ins. Co., et al.* (granting motion to dismiss)

- **Ohio**

- *Young v. Columbus Life Ins. Co.*, 2025 WL 2781300 (S.D. Ohio Sept. 30, 2025) (denying motion to dismiss)



Outcomes Favorable to Defendants

- *Norem v. Lincoln Benefit Life Ins. Co.*, 737 F.3d 1145, 1150 (7th Cir. 2013));
Thao v. Midland Nat'l Life Ins. Co., 549 F. App'x 534 (7th Cir. Dec. 13, 2013).

The COI rate is **based on the insured's sex, issue age, policy year, and payment class. The rates will be determined by us**, but they will never be more than the guaranteed rates shown on page 5."

- the phrase "based on" meant that the factors listed in the policy were not exclusive factors, but were merely the foundation or principal components of the COI rates.
- the phrase "based on" did not imply exclusivity, saying "neither the dictionary definitions nor the common understanding of the phrase 'based on' suggest that [the insurer] is prohibited from considering factors beyond sex, issue age, policy year, and payment class when calculating its COI rates."
- "[s]o long as the rates remained below the guaranteed rates, defendant had discretion in setting those rates under the policy."

Outcomes Favorable to Defendants

Anderson v. Wilco Life Insurance Company, 17 F.4th 1339, 1345-49 (11th Cir. 2021)

- Affirming dismissal of a plaintiff’s claim that an insurer breached her policy by determining COI rates using factors not described in the policy and other than factors following the “based on” language.
 - **“Current monthly cost of insurance rates will be determined by the Company.** The current monthly cost of insurance rates will not be greater than the guaranteed monthly cost of insurance rates which are listed on a Policy Data Page.”
- Holding that the phrase “[COI rates] will be determined by the Company” gives the insurer discretion to set the current monthly rate at any level, as long as it remains at or below the guaranteed rates.
- Holding that the policy was unambiguous.

Outcomes Favorable to Defendants

Slam Dunk I, LLC v. Connecticut Gen., 2021 WL 1575162 (11th Cir. Apr. 22, 2021)

- “The [COI rates] are **based on the Insured’s Attained Age, the type of benefit, the Class of Insured** and whether premiums...are paid directly...or through payroll deductions. **The [COI rates] are determined by the company based on its expectations as to future mortality experience.** Adjustment in the [COI rates] may be made...from time to time, but not more than once a year, and will apply to Insureds of the same class. Under no circumstance will the [COI rates] be greater than [the guaranteed rates].”
- The court relied on the Seventh Circuit’s reasoning in determining “[n]othing about the plain and ordinary meaning of the phrase ‘based on’ connotes exclusivity, and nothing about it implies the list that follows is exhaustive.”

Outcomes Favorable to Plaintiffs

Vogt v. State Farm Life Ins. Co., 963 F.3d 753, 761 (8th Cir. 2020)

- State Farm had never changed the COI rates. Plaintiff complained about the original rates.
- Policy language:

Monthly Cost of Insurance Rates. These rates for each policy year are **based on the Insured's age on the policy anniversary, sex, and applicable rate class.** A rate class will be determined for the Initial Basic Amount and for each increase. The rates shown on page 4 are the maximum monthly cost of insurance rates for the Initial Basic Amount. . . . **Such rates can be adjusted for projected changes in mortality but cannot exceed the maximum monthly cost of insurance rates.**

- The Eighth Circuit held that when the policy provided that COI rates would be “based on” certain factors, the language was, at the very least, ambiguous under Missouri law and should be construed against the insurer.
- Insurer breached the policy by determining COI rates in consideration of profits and expenses. Certified a Missouri statewide class.

Outcomes Favorable to Plaintiffs

Fleisher v. Phoenix Life Ins. Co., 18 F. Supp. 3d 456 (S.D.N.Y. 2014).

- “The COI charge . . . will be based on our expectations of future mortality, persistency, investment earnings, expense experience, capital and reserve requirements, and tax assumptions.”
- The court rejected the Seventh Circuit’s decision in *Norem*.
- “Based on” means “solely based on.”
- Certified a class of New York policyholders

Cases alleging a duty to lower COI rates

- *PHT Holding II LLC v. North American Co. for Life & Health Ins.*, 2023 WL 3714746 (S.D. Iowa May 27, 2023)
 - Plaintiff alleged insurer had a contractual duty to lower COI rates because of improving mortality
 - Cost of Insurance Rates. The monthly cost of insurance rate is based on the sex, attained age, and rating class of the Insured. Policy duration is also a factor in determining the monthly cost of insurance rates....**Monthly cost of insurance rates are determined by us, based on our expectations as to future mortality experience. Any change in cost of insurance rates** applies to all individuals of the same class as the Insured. Under no circumstances are cost of insurance rates for insureds in that standard risk class greater than those shown in the Table of Guaranteed Maximum Insurance Rates. Age nearest birthday is used in determining such guaranteed rates.
 - The court denied the Defendant's motion for summary judgment
 - The court held that the phrase "based on" is ambiguous and precludes summary judgment
 - Conflicting expert testimony about improving mortality created a fact question as to whether the insurer breached the policy by failing to reduce COI rates.

Cases alleging a duty to lower COI rates

- *Advance Trust & Life Escrow Services, LTA v. Protective Life Ins. Co.*, 2024 WL 878017 (11th Cir. Mar. 1, 2024)
 - Plaintiff alleged insurer had a contractual duty to lower COI rates because of improving mortality
 - The monthly cost of insurance rate is based on sex, attained age, and rate class of the Insured and on the policy year. Attained age means age nearest birthday on the prior policy anniversary. **Monthly cost of insurance rates will be determined by us, based on our expectations as to future mortality experience. Any change in the monthly cost of insurance rates** will be on a uniform basis for insureds of the same class such as age, sex, rate class, and policy year. However, the cost of insurance rates will not be greater than those in the Table of Guaranteed Maximum Insurance Rates, shown in the Policy Schedule.
 - There was no mandatory duty to lower COI rates. The phrase “Any change” is indicative of discretion because it advises that “no change is required” and does “not bespeak a mandatory obligation.”
 - The most reasonable meaning of the COI provision was that the insurer had the “capacity, ability, choice, or possibility to determine its internal COI rates in the future, as long as it does not exceed the guaranteed maximum monthly COI rate.”
 - However, as to a prior increase in COI rates, the court denied dismissal as to Plaintiff’s allegation that the insurer had completely ignored considering mortality.

Recent Case - Cases alleging a duty to lower COI rates

Heritagemark, LLC v. Unum Life Ins. Co. of Am., 2025 WL 2775626 (S.D. Tex. Aug. 6, 2025), *report and recommendation adopted*, 2025 WL 2774237 (S.D. Tex. Sept. 24, 2025) - Order Granting Summary Judgment

- The court found that the plaintiff failed to create a fact issue for two breach of contract elements: (1) breach and (2) causation.

“The Table of Risk Rates, Table 1 of the Schedule, shows the guaranteed maximum monthly risk rates We can charge for the Cost of Insurance. The Insured's Age, and Class determines which guaranteed rate applies. **We may charge a lower rate. We determine Our current Risk Rates based on Our expectation of future mortality. We reserve the right to change Our current Risk Rates** if We expect a change in the mortality factor. Such current rates will apply to all Insured of the same Age and Class....”

- The policy “gave Unum the discretion to determine whether to change the COI rates” and as a result, “there is unlikely to be any evidence that any future evaluation of expectations of future mortality would result in a change in COI rates.” *Id.*
- There could only be a breach “under these provisions if [Unum] failed to consider expectations of future mortality as ‘a main ingredient’ when setting COI rates” and interpreting “main ingredient” to mean the defendant could not completely ignore that factor.

Forms Discussing Periodic Review

U.S. Bank Nat'l Ass'n v. PHL Life Ins. Co. – Southern District of New York

“No more frequent than once per year and no less frequent than once every five years, We will review the monthly Cost of Insurance Rates to determine if these rates should be changed. However, the rates will never exceed the Guaranteed Maximum Cost of Insurance Rates shown on the Schedule Pages.

Recent Cases

Eighth Circuit cases:

- *Meek v. Kansas City Life Ins. Co.*, 126 F.4th 577 (8th Cir. 2025)
 - Following a jury trial, the court affirmed the partial summary judgment for the plaintiff and the order certifying a class.
 - Following *Vogt*, the court found a COI rate provision was ambiguous under Kansas law.
“Monthly cost of insurance rates actually used will be determined by us based on us expectations as to future mortality experience....”
 - Noting that: “Kansas law lays out two possibilities for resolving” ambiguity: (1) considering “extrinsic evidence of the policy’s meaning” or (2) “apply[ing] the *contra proferentem* canon, which resolves any ambiguity against the drafter.” *Id.* at 587.
- *Handorf v. Transamerica Life Ins. Co.*, 780 F. Supp. 3d 810 (N.D. Iowa 2025)
 - Order Denying the Defendant’s Motion for Partial Summary Judgment
 - Following a COI rate increase in 2022
 - Applying Wyoming law and following Eighth Circuit COI case law, the district court concluded that the “based on” language was “at least ambiguous” and “[m]ore likely, however, it means the COI rate can only consider the two specifically enumerated factors.”
- *Handorf v. Transamerica Life Ins. Co.*, 349 F.R.D. 540 (N.D. Iowa 2025)
 - Order Granting Motion for Class Certification
 - Finding that the plaintiff’s damage model satisfied the predominance and manageability requirements

Recent Cases

- *Martin v. Brighthouse Life Ins. Co.*, 2025 WL 2731710 (S.D.N.Y. Sept. 25, 2025)
 - Order granting class certification in part
 - Narrowing class to only the product owned by the class representative
- *Bella v. Wilton Reassurance Life of New York*, 2025 WL 1616851 (S.D.N.Y. June 5, 2025)
 - Order denying motion to dismiss
 - Declining to review documentation not referenced in the Complaint at the Rule 12(b)(6) stage
 - Finding that the interpretation of the COI rate provision was ambiguous and would require analysis of extrinsic evidence under New York law

Recent Cases

- *Young v. Columbus Life Ins. Co.*, 2025 WL 2781300 (S.D. Ohio Sept. 30, 2025)
 - Order denying the defendant's motion to dismiss
 - Finding the policy language ambiguous under Ohio law. The policy does not "expressly indicate" the insurer was required to adjust COI rates but the "will be determined" phrase "implies an ongoing obligation to make rate determinations."
- *Newton v. Brighthouse Life Ins. Co.*, 2025 WL 2582907 (N.D. Ga. Sept. 5, 2025)
 - Order granting class certification
 - The statute of limitations gave rise to predominance issues; accordingly, the court narrowed the class to only encompass the five (5) year limitations period.

Significant Settlements

Case	Court	Year Settled	Class Members	Purported Estimated Total Value	Estimated Cash Relief
<i>Davis v. Symetra Life Ins. Co.</i>	W.D. Wash.	2025	43,000	\$32.5M	\$21.7M
<i>Van Zanten v. Kansas City Life Ins. Co.</i>	W.D. Mo.	2025	88,000	\$45M	\$45M
<i>Silverstein v. Genworth Life Ins. Co.</i>	E.D. Va.	2024	3,000	\$5.1M	\$3.83M
<i>Glover v. Connecticut Life Ins. Co.</i>	D. Conn.	2024	191,000	\$147.5M	\$98.33M
<i>In re: AXA Equitable Life Ins. Co.</i>	S.D.N.Y.	2023	1,472	\$307.5M	\$202.28M
<i>Niewinski v. State Farm Life Ins. Co.</i>	W.D. Mo.	2023	450,000	\$65M	\$43.3M
<i>PHT Holding I LLC v. ReliaStar Life Ins. Co.</i>	D. Minn.	2023	36,480	\$47.7M	\$21.82M
<i>PHT Holding II LLC v. N. Am. Co. for Life & Health Ins.</i>	S.D. Iowa	2023	18,600	\$61.3M	\$37.54M
<i>Yearby v. Am. Nat'l Ins. Co.</i>	N.D. Ca.	2023	3,090	\$5.35M	\$3.56M
<i>In re Lincoln Nat'l COI Litig.</i>	E.D. Pa.	2023	50,000	\$109.96M	\$70.96M
<i>LSIMC, LLC v. American General Life Ins. Co.</i>	C.D. Ca.	2023	40,567	\$64.74M	\$47.14M
<i>Rogowski v. State Farm Life Ins. Co.</i>	W.D. Mo.	2022	760,000	\$325M	\$106.97M
<i>Brighton Trustees LLC v. Genworth Life and Annuity Ins. Co.</i>	E.D. Va.	2022	13,429	\$44.8M	\$15.87M
<i>Leonard v. John Hancock Life Ins. Co.</i>	S.D.N.Y.	2022	1,308	\$143M	\$64.67M

Significant Settlements

Case	Court	Year Settled	Class Members	Purported Estimated Total Value	Estimated Cash Relief
<i>Farris v. U.S. Financial Life Ins. Co.</i>	S.D. Ohio	2021	11,891	\$26M	\$6.9M
<i>Spegele v. USAA Life Ins. Co.</i>	W.D. Tex.	2021	122,000	\$90M	\$62.8M
<i>Burnett v. Conseco Life Ins. Co.</i>	S.D. Ind.	2020	4,508	\$27M	\$16.75M
<i>Thompson v. Transamerica Life Ins. Co.</i>	C.D. Cal.	2020	7,800	\$92.87M	\$73.52M
<i>Dickmon v. Banner Life Ins. Co.</i>	D. Md.	2019	10,500	\$38.11M	\$10.99M
<i>37 Besen Parkway LLC v. John Hancock Life Ins. Co.</i>	S.D.N.Y.	2019	79,033	\$91.25M	\$61.63M
<i>Feller v. Transamerica Life Ins. Co.</i>	C.D. Cal.	2018	70,846	\$205M	\$176.31M
<i>Larson v. John Hancock Life Ins. Co.</i>	C.D. Cal.	2018	103,000	\$59.75M	\$41.18M
<i>Bezich v. Lincoln Nat'l Life Ins. Co.</i>	Ind.	2017	77,000	\$196.22M	\$0.00
<i>Fleisher v. Phoenix Life Ins. Co.</i>	S.D.N.Y.	2015	2,100	\$142.46M	\$34.76M

Receivership of PHL Variable Insurance Company

- PHL Variable Insurance Company (and its predecessors) had increased COI rates on several occasions
- They were sued for these COI rate increases, and the litigation resulted in multiple class settlements
- PHL was recently sued again for a 2021 COI increase
- Plaintiffs also have named the parent entity as a defendant under various theories of vicarious liability and alter ego
- PHL was placed in receivership in 2024, staying the underlying litigation

Other Considerations

- New York Regulation 210 (2019) regulating review of Non-guaranteed Elements every five (5) years
- Actuarial Standard of Practice # 2 (effective 2022)
- Recent Developments in Mortality Experience

Recent Cases Scrutinizing Other NGE Factors - Taxes

- *Arbuckle Funding, LLC v. Talcott Resolution Life & Annuity Ins. Co.*, Case No. 7:23-cv-7972 (S.D.N.Y. 2024)

Plaintiff alleges that the insurer failed to determine COI rates “**based on future expectations of taxes**”

“The Cost of Insurance Rates for the Initial Face Amount and each subsequent Face Amount Increase will not exceed those in the Table of Monthly Maximum Cost of Insurance Rates shown on Page 3C. We can use Cost of Insurance Rates that are lower than the Monthly Maximum Cost of Insurance Rates shown on Page 3C. **Rates will be determined on each Policy Anniversary based on Our future expectations of such factors as** mortality, expenses, interest, persistency and **taxes.**”

Plaintiff alleges that the COI rates were originally determined on an after-tax basis with a 35% federal income tax rate assumption.

The 2016 Trump administration’s TCJA (the Tax Cuts and Jobs Act) reduced the corporate tax rate from 35% to 21%.

However, Plaintiff alleges that Talcott ignored all improvement in its future expectations of taxes and simply kept in place the same COI rate scales that were determined using a 35% tax assumption.

Recent Cases Scrutinizing Other NGE Factors - Taxes

- *Zaben, LLC v. John Hancock Life Ins. Co.*, Case No. 7:23-cv-8178 (S.D.N.Y. 2023)

Plaintiff alleges that John Hancock failed to determine COI rates based on expectations of future “tax assumptions.”

“Our current Cost of Insurance Rates **will be based on our expectations of future** mortality, persistency, investment earnings, expense experience, capital and reserve requirements, and **tax assumptions**, and will vary based upon the Life Insured’s sex, Age and Risk Classification; the duration that the policy has been In Force; and any supplementary benefit riders. **Periodically, we review our Cost of Insurance Rates and may re-determine Cost of Insurance Rates at that time** on a basis that does not discriminate unfairly within any class of lives insured. These rates, however, will never exceed the Maximum Monthly Cost of Insurance Rates shown in Section 2 as a rate per \$1,000 of Net Amount at Risk.”

Claims arising from Credited Interest Rates

James Hughes v. Jackson National Life Ins. Co., Docket No. 5:24-cv-02079
(C.D. Cal. Sep 27, 2024)

- Plaintiff alleged that the insurer credited less than guaranteed interest rate.
- “Plaintiff’s policy and others’ promise a Guaranteed Interest Rate. In Plaintiff’s case, 4% is promised. But Defendant is actually crediting or paying out significantly less than the guaranteed rate.”
- Plaintiff later intentionally dropped this miscalculation of interest claim stating that “With the limited production of Plaintiff’s policy files and Defendant’s calculations regarding interest determination it is premature to pursue these allegations....”

Claims arising from Credited Interest Rates

Graciano v. United Fidelity Life Ins. Co., 2025 WL 1109007 (C.D. Cal. March 4, 2025)

- Plaintiff alleged that the insurer credited less than guaranteed interest rate.
- Plaintiff's policy and others' promise a Guaranteed Interest Rate. In Plaintiff's case, 4% is promised. But Defendant is actually crediting or paying out significantly less than the guaranteed rate.
- The Court dismissed the case finding that the claims were barred by *res judicata*.

Claims arising from Credited Interest Rates

Baymiller v. Guarantee Mut. Life Ins. Co., No. 99-CV-1566, 2000 WL 1026565 (C.D. Cal. May 3, 2000).

- The *Baymiller* plaintiffs alleged that Guarantee Mutual (1) neglected to use a formula that would assess interest rates greater than guaranteed minimums and COI charges less than guaranteed maximums and (2) **improperly considered its own profit motives when calculating interest rates and insurance costs.**
- The court granted Guarantee Mutual's motion to dismiss, relying on policy language stating that **interest rates "may be applied . . . in the amount and by the method determined by the Company,"** and that Guarantee Mutual "may use cost of insurance rates that are lower than guaranteed rates." **The court held that such language gave Guarantee Mutual complete discretion in setting interest rates** and COI charges, as long as those rates and charges were within the minimum and maximum stated in the policy.
- The court also expressly held that the policy did not prohibit Guarantee Mutual from considering its own profit motives in calculating interest rates and COI charges.

Pension Risk Transfers

- Various ERISA Plan Sponsors have converted their obligations under their respective Pension Plans by transferring them into individual annuity contracts.
- United States Department of Labor's Interpretive Bulletin 95-1 requires fiduciaries choosing an annuity provider to "take steps calculated to obtain the safest annuity available."
- A large number of class actions arising from Pension Risk Transfers are working their way through the courts.
- The plaintiffs complain that the new annuities are not the "safest available" and are inferior to the benefits that were previously available under the respective pension plans.

Pension Risk Transfers

Two district court decisions in 2025 illustrate the issues:

- *Camire v. Alcoa USA Corp.*, 2025 U.S. Dist. LEXIS 59307 (D.D.C. Mar. 28, 2025).
 - Granted the defendant's motion to dismiss
 - Held that the plaintiffs did not have standing because they had not pled or demonstrated any actual harm
 - The plaintiffs' monthly annuity payments were not affected by the pension risk transfers; accordingly, they did not suffer a concrete injury that would confer standing
- *Konya v. Lockheed Martin Corp.*, 2025 U.S. Dist. LEXIS 59630 (D. Maryland Mar. 28, 2025)
 - Denied motion to dismiss
 - Finding that the plaintiffs had sufficiently alleged facts pointing to a “substantially increased risk” that the annuity company might fail in the future, in light of the collapse of Executive Life that occurred in the early 1990s

Pension Risk Transfers

- On September 8, 2025, the Fourth Circuit granted an interlocutory appeal of these two district court decisions.
- The Fourth Circuit will review whether retirees have standing to file a putative class lawsuit challenging pension risk transfers where they allege that the use of offshore captive reinsurers makes annuity providers riskier.

Sales Practices

Gonzalez v. Indep. Order of Foresters, 2025 WL 337898 (11th Cir. Jan. 30, 2025).

- Insured alleged that the independent agent that sold two policies had made material misrepresentations
- The court held that the plaintiff's reliance on the insurance agents was not justified
- The plaintiff was put on notice by language in the policies

QUESTIONS

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