COST OF INSURANCE IN THE NEWS

June 2019

Trade Groups Say Carriers Interfering With Market (6/27/19): Two U.S. life settlement trade groups are accusing life insurers of interfering in the secondary and tertiary markets for settled life insurance policies. Reportedly insurance companies are making competing offers on policies and demanding purchase prices under a yet-to-be-finalized IRS rule. An attorney representing the Life Insurance Settlement Association wrote to insurance regulators last fall complaining about what he saw as illegal conduct by Lincoln Financial Group in offering more than 5,000 policyholders the option to take enhanced cash benefits to retire their policies. If any of the offers were accepted, it meant those policies would never hit the life settlement market and the insurer would never have to pay death claims for them. LISA also accused Sun Life Assurance Ltd of Canada of competing with life settlement providers when it learned policies were for sale after change of ownership, change of beneficiary or verification of coverage requests were made. In return for surrendering the policy, the insured would receive the cash surrender value plus an additional payment. Other carriers, including John Hancock Life Insurance Co. and Protective Life Insurance Co. are allegedly sending letters to policy purchasers saying they must tell them policy sales prices due to a new IRS reporting rule under IRC 6050Y, which were added by the Tax Cuts and Jobs Act.

Texas Governor Signs Cost-of-Insurance Bill (6/17/19): Texas Gov. Greg Abbott on June 14 signed a bill giving policyholders 90 days' notice when insurers plan to raise cost-of-insurance rates. The bill will take effect Sept. 1. However, the part applying to an increase in a non-guaranteed charge, or the COI rate, will become effective Jan. 1. The legislation, HB 207, was sponsored by Rep. Tom Craddick, R-Midland. This was his second attempt to pass a bill covering increases in the mortality charge. His first attempt failed two years ago. The Texas bill is similar to CA AB 2634, which was signed into law last year by former California Gov. Jerry Brown. The California Department of Insurance sought the legislation after it received an onslaught of complaints from insureds, who saw rates double, triple or even quadruple after years of paying premiums. The California notice of any COI increases will be required as of July 1. Insurers also must provide in-force illustrations of current and future benefits for policies facing an adverse change by July 1, 2020. Life settlement market members said they thought both bills were weak and that regulators and legislators should be more vigilant in holding life insurance companies accountable for forcing seniors out of their life insurance policies after years of dutiful payments of premiums. A similar notice is required under regulations by New York regulators, who required disclosure of increases beginning in March 2018. The department has 120 days to review such increases before they can take effect while policy owners receive 60 days' advance notice.

California Insurance Department Defends COI Law (6/11/19): California insurance regulators defended the state's new cost-of-insurance law after two life settlement market members said they viewed it as a weak response to often massive rate increases. The legislation at issue, AB 2634, was signed by former Gov. Jerry Brown in September. After receiving thousands of complaints about the rate increases, mainly from "distressed seniors," former Insurance Commissioner Dave Jones backed the bill that gives policy owners 90 days' notice of impending rate increases. The notice requirement will take effect July 1 In its Sept. 19 press release, the California Department of Insurance said consumers received little or no notice from their insurers when the "charges doubled, tripled or quadrupled almost overnight." In one case, the department said the rate went up 672%. Life settlement representatives said last month they were disappointed in the bill and a similar measure that passed in Texas in May, which now awaits the governor's signature. The department reiterated that the intent of the legislation was to respond to consumer complaints it had received over the years, and that officials haven't seen a complaint trend involving the life-settlement situation. As to why the department didn't seek to rein in the rates by requiring approval before they took effect, the department responded that "California law does not currently require insurers to seek prior approval for rate increases for life insurance products." This differs from a COI regulation that went into effect in New York in March 2018. The New York rule has 120 days to review such rate increases before they can be implemented. Policy owners also get 60 days' advance notice of increases. As to whether the legislation would discourage insurers from raising COI rates, the department responded: "The intent of the bill was to provide consumers sufficient notice of increased charges and opportunity to make a decision that works best for them. Since insurers are required to provide at least 90 days notice before any increase in the cost of insurance applies to consumers, it will give consumers better and more complete information about the effect of insurer cost increases. ... This will ensure that insurers are no longer raising these rates and providing their policyholders with little or no notice prior to the increase, which has been the previous practice of many insurers." Harvey Rosenfield, founder and counsel for Consumer Watchdog, a nonprofit consumer-protection group in Santa Monica, Calif., also was surprised to learn about the new law. His group has been filing COI litigation against carriers and won a $110.7 million class-action settlement against Transamerica in February.

May 2019

Federal Court Denies Class Certification in COI Case (5/3/19: The US District Court for the Southern District of Iowa, Central Division, on May 3 issued an important Order in *Taylor v. Midland National Life Insurance Co*. denying plaintiff's motion for a class certification in a Cost of Insurance (COI) case. The plaintiff had claimed that defendant Midland breached his insurance policy from its inception by considering "non-mortality factors" in setting COI rates, in violation of the policy provision allegedly requiring Midland to consider only a single factor, and by failing to adjust the COI rates downward because mortality expectations had improved over time. Among other things, the Court denied plaintiff's motion to certify a class under Federal Rules of Civil Procedure because plaintiff had failed to show that questions of law and fact predominated over questions affecting only individual class members. In this regard, the Court determined that variations in multiple state laws prevented a finding that common issues of law predominated, rejecting plaintiff's argument that Iowa law would apply to all class members' claims. Following choice of law analysis, the Court found that "the law of every jurisdiction in which an insured is domiciled will apply in this case." That would affect the outcome for because the substantive law governing plaintiff's breach of contract would vary among the states (as demonstrated by conflicting decisions in the Seventh Circuit *Norem* decision (Illinois law allows consideration of non-mortality factors) and the Missouri federal district court *Vogt* decision (Missouri law does not allow for consideration of non-mortality factors). Also, there are varying state laws regarding the admission of extrinsic evidence to prove the meaning of contract terms. The extrinsic evidence that would be offered in this case was the testimony of two sales agents who, during the sales process, advised customers that COI deductions could fluctuate based on non-mortality factors such as operating expenses. In the Court's view, that explanation could have impacted a customer's understanding of the COI rate provision and would create different issues for different customers. The Court also determined that individualized issues with respect to statutes of limitations defeated predominance. Plaintiff argued that there were no relevant differences in the statutes of limitations in the 50 states. The Court rejected that argument and held that Iowa law governed all the statute of limitation claims. Iowa law in turn provided that the statute of limitation begins to run from the time of breach of the contract, regardless of when the breach is discovered. In response to this rule, plaintiff would have to argue that the statute of limitation was tolled under the fraudulent concealment doctrine, which in turn would raise individualized questions of fact.

April 2019

Judge Denies AXA's Request to Dismiss Fraud Claim (4/2/19): A New York federal judge sided with Alberta Investment Manager Corp. in rejecting AXA's request to dismiss a fraud claim except for policies taken out in Pennsylvania and Alabama. The March 27 decision of the U.S. District Court for the Southern District of New York in Manhattan applies to the investment manager's two entities, LSH Co. and LSH II Co., and securities intermediary Wells Fargo. Two other claims alleging contract violations against AXA -- one under New York general business law and the other under New York insurance law -- previously survived motions to dismiss in a similar suit, the Brach Family Foundation Inc. case, and thus will remain in the LSH case as well. On a breach-of-contract claim under New York business law, AXA and LSH stipulated to an April 2018 court decision that the insurer wouldn't seek to dismiss the claim, although it left open the possibility that AXA could appeal the dismissal in both cases in the future. The decision said that AXA sought dismissal of common law fraud claims brought under the laws of 15 jurisdictions as well as consumer protection laws in Colorado, Illinois and Minnesota.

At issue are COI rate increases of more than 40% for 53 Athena Universal Life II policies issued by AXA between 2005 and 2007, which were purchased by investors. Alberta Investment Management's LSH entities and Wells Fargo alleged in March 2018 that the rate increase could cost about $200 million in additional premiums through maturity and was excessive. The 53 policies range from $1.8 million to $25 million in face value for a total of $356.69 million in face amount. The plaintiffs alleged the rate increase was intended to force them to either pay "exorbitant" premiums" that AXA knew would devalue the policies or force them to lapse or surrender the policies and forfeit premiums they've paid for years, which would give the insurer a windfall.

The suit said that AXA's "purported justification" for making the increases was based on mortality and investment income experience for the policies, which were "supposedly less favorable than expected." It said, however, those reasons were not true because AXA has experienced neither higher mortality rates, nor lower investment income for the policies. The investment management group said the increase breaches the terms of the policies because it wasn't equitable to all policyholders in the same class, it was not based on reasonable assumptions of expenses -- mortality, policy and contract claims, taxes, investment income and lapses. The Alberta group said AXA notified it in October 2015 that it was increasing rates only on policies for insureds who were 70 or older with face amounts of $1 million or more. It alleged this discriminates against a subset of policyholders in a larger class. The Alberta group asks for compensatory damages of at least $200 million, unspecified punitive damages, pre- and post-judgment interest costs of the suit, attorneys' fees and a penalty equaling the amount of premiums paid.

Judge Approves John Hancock Class Settlement (4/1/19): A federal judge approved a $91.3 million class-action settlement in a cost-of-insurance case against John Hancock Life Insurance Co. The U.S. District Court for the Southern District of New York in Manhattan issued an order March 29, endorsing the agreement. The settlement included $27.4 million in attorneys' fees, plus a pro rata share of the interest earned in the settlement fund. The firm also sought reimbursement of $2.2 million in costs. John Hancock did not contest the settlement and no class member objected to it, according to the Friday decision awarding fees and expenses. The suit was filed in December 2015.

Besen of Rockland County, N.Y., owns a universal life policy with $1.4 million in face value on an unidentified man and woman. The policy was issued in 2000 when the man was 70 and the woman was 65. One of the insureds died. The suit claimed breach of contract on behalf of a COI-decrease class and breach of contract on behalf of a rider-overcharge class. Besen alleged it and others were charged excessive premiums under the "Age 100" rider. The rider prohibits the company from charging premiums if an insured lives after 100. In return, the contract allows the company to charge additional premiums on policies held on insureds up to age 32. But the suit said that John Hancock charged Besen additional premiums under the rider, although the insureds were older than 32. Unlike many other suits against carriers beginning three-and-one-half years ago over COI charges, there was no rate increase in this case. Instead, Besen said that John Hancock had charged too much for the COI, or mortality charge, because the carrier was experiencing an improving mortality picture, as policyholders were living longer.

March 2019

Judge Denies PHL Variable's Request to Dismiss Class-Action Suit (3/12/19): PHL Variable Life Insurance Co. lost a bid to dismiss a class-action lawsuit alleging it raised cost-of-insurance rates in an unlawful and discriminatory manner. The decision was handed down March 12 by the US District Court for the Southern District of New York in Manhattan. PHL Variable had sought to dismiss the case brought by Advance Trust & Life Escrow Services "for want of personal jurisdiction," arguing that it should be tried instead in Connecticut, the site of its home office, instead of in New York. The judge said, however, that letters announcing the 2017 rate increase were on PHL letterhead listing a New York address and the insurer described itself as “A Nassau Re Company” and provided a New York return mailing address. Nassau Reinsurance Group Holdings LP bought Phoenix in June 2016 for $217.2 million. PHL is a subsidiary of Phoenix. It was publicly traded, but has been taken private by Nassau Re.

The court noted that the 2017 COI increase does not apply to PHL's New York sister company (Phoenix Life), although the two types of policies facing the increase issued by the two entities are the same. The plaintiffs alleged this was done intentionally to avoid scrutiny from the New York Department of Financial Services, which regulates Phoenix Life Insurance Co., and which has been actively regulating COI increases.

Phoenix settled similar class-action litigation in September 2015 for about $130 million, requiring it to freeze any proposed future increases through Dec. 31, 2020, on class members. The complaint noted when Phoenix Life first raised the COI rate in 2010 on Phoenix Accumulator Universal Life policies, the New York Department of Financial Services, the California Department of Insurance and the Wisconsin insurance commissioner found it was illegal. Phoenix also raised COI rates a second time -- in 2011. Policyholders were notified of the third COI increase in August 2017. Besides the Phoenix Accumulator Universal Life policies, the increase also applies to Phoenix Estate Legacy policies on the first anniversary after last Nov. 15. It also would apply to policies in the first class-action settlement after Dec. 31, 2020.

The suit said the raises are discriminatory because they would apply to policies on insureds between the ages of 71 and 85, who are not in a separate class of policyholders. The suit further alleged that the rebate for the unnamed institutional owners also was discriminatory because Phoenix was cutting a special side deal for them. Any COI rate increases must be based on mortality, persistency, investment earnings and expenses, the suit said, adding that some of the policies had been issued as recently as 2014. However, mortality has been improving at the rate of about 1% a year and five-year Treasury rates are now higher than they were in 2014. The policies of concern ranged from $1 million to $8 million in face amount for a total of $43 million in face value. They were issued between 2005 and 2015.

Judge Certifies Class-Action in Lincoln Life Case (3/14/19): The U.S. District Court for the Southern District of New York in Manhattan on March 13 granted class certification in a cost-of-insurance lawsuit against Lincoln Life & Annuity Co. of New York in which the lead plaintiff is not an investor, although investors may be included in the class. The judge agreed to class certification on a breach-of-contract claim but denied it for an unjust-enrichment claim. Plaintiffs argued that the New York Department of Financial Services concluded that Voya breached the terms of the policies in fundamental ways and it abdicated its duties to policyholders by allowing Lincoln, its reinsurer, to use its costs, its expectations, and its faulty methodology as a basis to increase rates. The court noted that a plaintiff's expert estimated that there are more than 45,000 members of the class.

Hanks of Bedford, Texas, sued in August 2016. She had taken out a $50,000 policy in 1984 from Aetna Life Insurance and Annuity Co., which sold its life insurance business to Lincoln Life under an indemnity reinsurance agreement in 1998. In 2002, Aetna became known as Voya Retirement Insurance and Annuity Co. Hanks had brought one claim of breach of contract against Voya and one claim of unjust enrichment against Lincoln Life. All policies in the case were issued between 1983 and 2000.

In May 2016, Lincoln, acting as administrative agent and reinsurer, sent letters to thousands of policyholders announcing plans to raise rates from 15% to 55% effective that June 1. Lincoln said that the rates would be raised on 18 universal and variable products issued by Aetna and due to expected lower investment income and higher costs. The plaintiff said the COI rate hike was unlawful because it was based on Lincoln's estimates of future profits rather than Aetna's estimated future costs. The plaintiff claimed it would prove this with Lincoln's and Aetna's own documents.

February 2019

Investors Opt Out of Transamerica Class Settlement (2/9/19): A federal judge approved finally a Transamerica Life class-action settlement for $110.7 million, a reduction from a proposed $195 million payout after eight large life settlement investment groups withdrew from the agreement. The U.S. District Court for the Central District of California in Los Angeles certified the settlement Feb. 6. The settlement resolved a dispute over a cost-of-insurance rate hike by the insurer as high as 100% that was imposed in 2015 and 2016. Six of the eight large investors are represented by Orrick, Herrington & Sutcliffe LLP. The names of all eight investment groups were not known.

A Jan. 14 court filing in the Transamerica case by the class counsel reported an unexpectedly high level of exclusions by investor groups holding huge blocks of In-Force policies. The face value of the policies withdrawn by the investors' groups is confidential. Of a total of 69,908 policies in the settlement class, those owning 573 policies opted out. Some 544 of the 573 excluded policies are held by eight investor groups and 439 of those policies are represented by Orrick. Since that filing, two additional policies were added to the opt-out list, bringing the total to 575 policies.

The attorneys' fees originally were calculated at $33.75 million but were reduced to $27.7 million since the investors pulled out. An additional $1 million will be paid for litigation costs. The first $10 million of the fees will be paid directly by Transamerica and will not come from funds to be distributed to class members. Fees represent about 16% of the total settlement fund. The opt-outs by institutional investors didn't come as a complete surprise. The co-lead class counsel said it had noted in its initial fee brief and joint declaration that institutional investors who acquired "high-dollar" policies would be more likely to opt out and thus they created a formula that reduced the settlement's common fund based on such exclusions to preserve the same level of benefit for the settlement class to minimize Transamerica's incentive to terminate the agreement.

The settlement fund equals about 62% of the past alleged overcharges, not including legal fees and expenses. The money from the settlement will go to existing policyholders and those whose policies lapsed after the raises were imposed in four different waves in 2015 and 2016. Transamerica won't impose any additional COI increases on class members for five years unless it's ordered to do so by regulatory authorities, something considered unlikely. Future COI increases sought by Transamerica cannot seek to recover past losses, according to a joint declaration filed with the court supporting the preliminary agreement. Transamerica won't deny future death benefits to class members based on alleged lack of insurable interest or misrepresentations on policy applications, a provision benefitting investors, who have faced numerous such legal challenges over the years. Those who retained ownership of policies and those who lapsed their policies will be treated the same. The settlement payments will automatically increase account values of those who sustained their policies while owners of terminated policies will receive cash payments. In preparing for mediation, the class counsel acquired a license to use proprietary software allowing the consulting actuary to examine the COI increases using alternative actuarial assumptions.

The agreement for a refund of 62% of overcharges compares favorably with similar settlements in COI cases. In the Marty Fleisher settlement with Phoenix Life in 2015, the cash payment of $34.8 million to class members amounted to 68.5% of the overcharges. The total value of the settlement was $134.8 million. The 37 Besen Parkway LLC settlement with John Hancock Life of $91.25 million in cash amounts to about 42% of the overages for about 80,000 policyholders.

The universal policies of concern were issued by Transamerica between 1983 and 2008. The original suit was filed by Consumer Watchdog in February 2016 on behalf of Gordon and Mary Feller of San Rafael, Calif., and George and Margaret Zacharia of El Cerrito, Calif., who were notified that rates were going up 38%. The Fellers bought their $500,000 Trans Max policy in September 1989 from Transamerica Occidental Life and the Zacharias acquired their policy with $250,000 in in face value in December 1990. Transamerica Occidental merged with Transamerica Life in October 2008. Transamerica raised rates by as much as 100% in June 2015. The plaintiffs alleged that the insurance company dramatically raised the rates to induce "shock lapses" to avoid paying death benefits. They accused Transamerica of raising the rates to avoid its obligation to pay high interest rates it guaranteed in the policies and to recoup past losses. In August 2017, the plaintiffs filed an amended class-action complaint alleging breach of contract, breach of the implied covenant of good faith and fair dealing, tortious breach of the covenant of good faith and fair dealing, violation of California's Unfair Competition Law, declaratory relief, preliminary and permanent injunctive relief and elder abuse under California law. All claims survived Transamerica's motion to dismiss.

October 2018

Transamerica Pays $195 Million To Settle Lawsuit Over Universal Life Insurance: *Investment News (10/04/2018) Neal, Ryan* Transamerica Life will pay $195 million to settle a class-action lawsuit alleging the company improperly increased the monthly charges on 70,000 universal life insurance policies. Under the terms of the settlement, Transamerica will pay into a common fund and absorb the attorneys' fees. Policyholders who participate in the settlement will receive a monetary award — either through credits to policy account values or in cash for policies no longer in force — and protection from any additional increases in the monthly deduction rate for five years. According to Consumer Watchdog, Transamerica notified policyholders in 2015 that it was increasing charges by as much as 38% on universal life insurance packages originally sold in the late 1980s and early 1990s. This meant some consumers entering retirement were forced to choose between losing the policy, which promised monthly interest payments of at least 5.5% annually, or paying the higher premiums, Mr. Rosenfield said. Transamerica **said** in a statement that the policies permit the company to adjust monthly deduction rates up to a contractually guaranteed maximum, and that the increase was "necessitated by low long-term interest rates, changes in expectations as to future mortality experience, and other factors, and in accordance with the policies' contractual terms." However, the plaintiffs argued Transamerica had breached its contract and acted in bad faith by raising charges as a pretext to avoid or offset its obligation to pay the guaranteed monthly interest. Plaintiffs also alleges Transamerica wanted policyholders to relinquish their life insurance so the firm could recoup losses it sustained as a result of low interest rates.

September 2018

Universal Life Insurance, a 1980s Sensation, Has Backfired: Wall Street Journal, By Leslie Scism, Sept. 19, 2018: Universal life was a sensation when it premiered, and for some years it worked as advertised. It included both insurance and a savings account that earns income to help pay future costs and keep the premium the same. That was when interest rates were in the high single digits or above. Today, rates are completing a decade at historically low levels, crimping the savings accounts. Meanwhile, the aging of the earliest customers into their 70s, 80s and even 90s has driven the yearly **cost of insuring** their lives much higher. The result is a flood of unexpectedly steep life-insurance bills that is fraying a vital safety net. …John Resnick, co-author of an American Bar Association book on life insurance, said of hundreds of older policies he has reviewed over a decade, “easily 90% or more actually were in trouble or soon to be in trouble.” Many people “are sitting on a ticking time bomb, and most probably aren’t aware of it,” he said. Universal life is among the reasons Americans are approaching retirement in the worst shape in decades. The insurance policy type emerged in an era nearly four decades ago when the Federal Reserve was fighting inflation with high interest rates. … When these policies first were sold, U.S. interest rates were unusually high, and insurers often illustrated the policies to potential customers using a scenario of continuous 10% to 13% rates…The interest projections were proving unrealistic by the mid-1990s, and especially so after the 2008 financial crisis depressed rates. Although many policies didn’t allow the savings-account return to fall below 4% or 5%, that wasn’t enough for early customers. The cost of a year of term insurance soars once people reach their late 70s. Compounding the problem, universal life offers flexibility that is alluring but dangerous. …. It is widely accepted that not all customers—or even all insurance agents—fully understood years ago how borrowing or skipping payments could undermine a universal-life policy…. By 1985, universal life was generating 38% of the industry’s premiums for individual life policies... Americans bought two to three million universal-life policies a year in the 1980s and early 1990s…Lawsuits arose, and from the mid-1990s to early 2000s plaintiffs’ lawyers reached settlements over allegedly deceptive sales practices, such as promising the savings buildup would eliminate the need to pay premiums at all in a decade or so. State regulators tightened rules on how insurers could illustrate the policies, including requiring them to cite interest rates that could be justified for the long haul. The industry responded by offering a new wrinkle:

guaranteed universal life, which had a fixed premium designed to ensure lifetime coverage if paid on time. Many early universal-life policyholders swapped into this… A MetLife spokeswoman said, "We understand it can be challenging to cover the **cost of insurance**" when a policy contains less built-up income than envisioned. She said MetLife updates policyholders annually on their accounts' value and urges them to contact their agents or the company. The tumble in interest rates didn't affect just customers—it also dinged insurers' profits. As corporate-bond yields fell below 5% in recent years, insurers earned less from investing premiums, yet still had to pay guaranteed minimums of around 4% on universal-life savings accounts. With future profits expected to be hurt by low rates, at least a half-dozen insurers have invoked policy provisions that they say allow them to raise the rates used to calculate the annual cost of customers' term insurance, according to ITM TwentyFirst, which provides policy-management services. This means some customers see costs rising not simply because they are a year older, or because their savings account didn't grow as planned, but because their insurer has changed its price formula. As a result, even some customers who kept their policies well funded are being hit with unexpectedly higher costs… Such increases are "causing more life-insurance policies to expire even quicker than before" as customers who can't afford them drop their policies and hand insurers "windfall profits," said Henry Montag, a principal with The TOLI Center East in Melville, N.Y., which evaluates policies held in trusts…

Universal life insurance lawsuits underscore product risk: Investment News (9/19/18): Lawsuits filed against insurers in recent years for their practices around universal life insurance policies highlight the risks these products can pose for unwary financial advisers and clients. Transamerica Life Insurance Co., AXA Equitable Life Insurance Co. and **Lincoln National Corp.** are examples of firms currently in the litigation crossfire for **raising the cost of insurance in certain universal life policies**. Nationwide Life Insurance Co. also privately settled a lawsuit with two individuals in May relative to variable universal life insurance costs. John Hancock Life Insurance Co. settled a lawsuit related to UL insurance costs in July for $91.25 million. Unlike other products, such as term and whole life, universal life — which is permanent, cash-value life insurance — allows buyers to make flexible premium payments. That flexibility allows buyers to fund policies with a relatively low amount of premiums to keep the insurance going. However, a cost increase could leave these clients with an unattractive choice: pay a much higher annual bill to keep the contract afloat or lapse the policy altogether. The recent wave of lawsuits, which began cropping up around 2015, have targeted UL policies sold in the 1980s and 1990s, experts said. Insurers offered an attractive guaranteed minimum interest rate to policyholders of about 4%-5%, experts said, supported by higher interest rates set by the federal government during this period. But a decade of rock-bottom interest rates in the wake of the financial crisis hurt insurers' profitability, reducing the return on bonds underpinning their products. The Consumer Federation of America sent a letter to all state insurance commissioners in 2016, saying that many UL policies "are failing or will soon begin to fail absent much higher interest rates."… The John Hancock lawsuit is a bit different from the other cases. Plaintiffs in this case — 37 Besen Parkway, LLC v. John Hancock Life Insurance Co. — allege the company failed to decrease its cost of insurance as mortality rates decreased.

"Did Dad Get Scammed With This Life Insurance Policy?" *NJ.com (09/18/18) Mueller, Karin*. Karin Mueller, contributor for NJ.com, helps a reader who believes their father is being scammed by his life insurance policy. The reader says their dad took out a $50,000 whole life policy on my mom 20 years ago. She's now 90 and the company said the premiums are going up from $500 a year to $11,000 a year. Ed Gaelick, chartered life underwriter and chartered financial consultant with PSI Consultants, helps provides answers in this case. Gaelick says there are some hybrid whole life plans whose terms may change over time - depending on the exact type of insurance policy and how the cash accumulation has performed. "Each has specific features and may eventually require a larger premium if the accumulated values are ultimately used up to subsidize the premiums your dad has been paying, which were obviously not enough to cover the cost of insurance," Gaelick adds. He says the case may be tough to challenge because he probably received annual statements with values, and he would have seen a decline in the cash accumulation over the past few years at the least. "But if the plan was misrepresented, he can certainly challenge it, yet in my opinion unlikely to be successful," says Gaelick.

Security Life of Denver Faces Class-Action Suit Over COI Increases: Security Life of Denver is the latest carrier to face a class-action lawsuit over cost-of-insurance rate increases. Advance Trust & Life Escrow Services, securities intermediary for the Life Partners Position Holder Trust, sued July 26 in the U.S. District Court for the District of Colorado in Denver. The trust has been running off policies in the $2 billion Life Partners portfolio since the firm exited bankruptcy in December 2016. Three years ago, several Voya Financial subsidiaries such as Security Life began announced COI increases on certain legacy blocks of universal life policies. Security Life notified policyholders of a 42.3% rate increase on Strategic Accumulator Universal Life policies, which is costing the trust hundreds of thousands of dollars each year, the suit said. The insurer also raised rates 9.25% on Life Design Guarantee Universal Life policies. "Security Life's letters to policyholders were deliberately cryptic as to the reasons for the increases, making no mention of mortality experience," the suit claimed. COI rates are intended to cover mortality costs of policies. The notice only said the rate increases were made in response to increases in the anticipated cost for providing future coverage. "There was no sudden change for the worse in Security Life's mortality expectations for the policies, as would be required to raise COI rates. Nationwide mortality rates have declined significantly over the past several decades and this trend is widely projected to continue," the suit further said. Instead of increasing rates, Security Life should have lowered rates, not imposed a "massive raise," the suit also said. In its 2015 annual statement, filed with the states and signed by Voya's chief actuary, Security Life said it expected "historical mortality improvement trends" to continue, and thus Advance Trust said the insurer expects to pay out fewer death benefits each year. "And if Security Life pays out fewer death benefits over time, then Security Life's 'anticipated cost of providing future coverage' goes down, and the COI rate should correspondingly decrease," the plaintiff argued. Security Life's apparent motive is to increase its profits and thus increase dividends it pays to Voya, its parent company, Advance Trust contends. "In recent years, insurers have improperly used COI increases to trigger large, one-time dividends to their parent companies," the suit said. In the case of Security Life, the 2015 COI increase allowed it to pay "extraordinary dividends" of $130 million to Voya in 2015 in addition to an "ordinary dividend" of $111 million, Advance Trust claimed. The total dividend amounted to a 750% increase over the $32 million dividend that Security Life paid to Voya in 2014, the suit said. "The only way that such a massive dividend could have been triggered is if Security Life was using COI adjustments to increase profitability," the suit said. Besides increasing profits, the rate hike furthered Security Life's goal of inducing policy lapses so it wouldn't have to pay death claims, the suit claimed. COI increases as high at 42.3% result in a phenomenon known as a "shock lapse" in which large numbers of policies are lapsed or surrendered because account values are rapidly drained by the new charge or the future cost of premiums is not worth keeping the coverage, the suit added. The suit further said that the number of shock lapses depends on the size of the increase, but it has been projected that 10% of policies will lapse or be surrendered within the first year after such an increase. Security Life was likely projecting an even higher lapse or surrender rate on the policies being hit with the 42.3% increase, the suit speculated. The suit said courts have held that insurers can't use COI rates to manage profitability, to induce lapses and must use actuarially reasonable assumptions when setting COI rates and must set such rates in good faith. It said Security Life violated all those restrictions, breaching its contracts with policyholders. It asks the court to prohibit Security Life from continuing to collect the "unlawful" and "unfair" COI rates and to order reinstatement of any policies that were surrendered, lapsed or otherwise terminated following the alleged breach of contract. Specifically, Advance Trust said the COI increases have affected five policies held by the Life Partners' trust with a total of $22.7 million in face value, which were issued in the mid-2000s. Advance Trust also alleged that Security Life's illustrations were misleading. It said that as late as Aug. 19, 2015, it continued to illustrate COI charges under the pre-increase rate. The plaintiff said this contradicts the insurer's purported justification for making the increase. "The Code of Colorado Regulations requires that illustrations provided to policyholders be not more favorable than a scale of rates that is reasonably based on actual recent experience, and requires insurers to annually certify compliance," the suit said. State illustration regulations are intended to ensure that policyholders are told of experience trends and that an insurer is not illustrating COI rates that it knows may change. "This prevents insurers from engaging in bait-and-switch tactics whereby they illustrate low rates in order to convince policyholders to continue paying premiums and then suddenly increase rates at a later date after policyholders have invested tens of thousands of dollars into their policies," the suit said. "That Security Life was illustrating pre-increase COI rates as late as August 19, 2015 further confirms that -- contrary to its letters to policyholders -- Security Life had no actuarial basis for concluding that the 'anticipated cost of providing future coverage' was increasing." In its Aug. 28 response, Security Life denies the central allegations made by Advance Trust, including that the COI increase was intended to meet Security Life's profit goals and increase returns to Voya's shareholders. It also disagrees in its response that the suit accurately described the terms of the contracts at issue. It admits that it has never decreased COI rates on the policies at issue during the past 15 years and denies that it has anticipated improved mortality experience relating to the plaintiff's contracts. Security Life asserted a number of affirmative defenses, including that the claims are barred by a voluntary-payment doctrine. It said that although the plaintiff claims it was forced to pay the COI increase, it could have terminated the contracts and sought coverage elsewhere. The insurer also said that the plaintiff willingly became the owner of the insurance contract more than a year after the increases went into effect. It further said its predecessor failed to disclose the claims at issue in its bankruptcy filings and thus under the "doctrine of unclean hands" should be barred from seeking any remedy. It also said certification of a multi-state class would violate due process. It said that the claims are subject to varying state laws and some of them are time-barred.

August 2018

Class Certification Sought in Cost-of-Insurance Suit Against Lincoln, Voya: Not all proposed cost-of-insurance rate increases pass muster with New York's insurance regulator. That's the case with a 15% to 55% rate hike sought by **Lincoln Life** & Annuity Co. two years ago. In May 2016, Lincoln, acting as administrative agent and reinsurer, sent letters to thousands of policyholders announcing that it planned to raise rates from 15% to 55% effective June 1, 2016. Lincoln had said that the rates would be raised on 18 universal and variable products issued by Aetna and this was being done for the same reasons as other insurers - expected lower investment income and higher costs. The New York State Department of Financial Services denied the rate increase for its residents, but it was imposed against policyholders in other states. Now, the **Susman Godfrey LLP** law firm representing the insured who sued the carrier two years ago in the U.S. District Court for the Southern District of New York in Manhattan is seeking class-action certification. On Aug. 15, the firm filed a 33-page motion for certification on behalf of Helen Hanks of Bedford, Texas, and others in the proposed class. She had taken out a $50,000 policy in 1984 from Aetna Life Insurance and Annuity Co. The case presents common central questions with common answers: whether Aetna-now known as VOYA - breached the standardized, form insurance policies owned by all members of the proposed Class by raising cost of insurance ("COI") rates, and whether Aetna's reinsurer, Lincoln, was unjustly enriched as a result. It also said that the policies at issue require that any COI rate changes be based on Aetna's estimate of future costs, on a class basis and be made in a uniform or nondiscriminatory matter. Cost factors include the mortality charge, or an insurer's projected costs of being able to pay death benefits, investment income, expenses and the length of time policies remain in force. After Hanks sued, the New York Department of Financial Services said the rate hike was illegal and suspended the rate increase for New York insureds as of June 1, 2016. Many parts of last week's filing have been redacted at the request of the defendant, who considered the information to be confidential under a protective order. The motion redacted the number of policies the COI rate increase applied to in New York and the number of policies it applied to in other states. The policies issued in other states are the same as those issued in New York and "there is no actuarial or other basis whatsoever to justify discriminating between New York and non-New York policy owners or insureds," the motion said. The plaintiff said the COI rate hike was unlawful because it was based on Lincoln's estimates of future profits, rather than Aetna's estimated future costs. The motion further said that Hanks' policy is a Universal Life 83 (Aeconoflex) policy, which like others in the class, was issued between 1983 and 2000. Plaintiff's damages expert has calculated future overcharge and the present value of damages to be over $163 million.

New York Regulator Approved John Hancock Rate Increase: The New York insurance regulator approved John Hancock Life Insurance Company of New York's cost-of-insurance rate increase on Performance UL policies and refused to disclose all pertinent information the insurer provided to justify the increase. The correspondence between John Hancock and the New York State Department of Financial Services was redacted such that there's no revelation of how the insurer responded to the department's questions during a five-month period when the request was analyzed. The department, however, had no problem releasing the letter granting its approval of the increase, which apparently affects 176 policies issued to New York residents on seven policy forms issued between 2004 and 2009 About 1,500 policyholders nationwide were notified in May of rate hikes of up to 71% on Performance UL policies. The department's Regulation 210 requires insurers to give it 120 days of advance notice before raising COI rates and 60 days' notice to consumers, and requires that changes to non-guaranteed elements, or COI rates, “be based on reasonable assumptions as to investment income, mortality, persistency, and expenses; be purely prospective and not seek to recoup past losses; not increases the insurer's profit margins at any duration; and be applied on a basis equitable to all policyholders of a given class." Following a complete review of the submission and relying on representations by John Hancock, the Department was satisfied that the proposed changes do not violate any New York State statutes or regulations.

New York Regulator Refuses to Release John Hancock Records: Regulators sided with John Hancock Life Insurance Company of New York in refusing to release or redacting parts of records the carrier sent to the New York State Department of Financial Services on its cost-of-insurance rate increase for Performance UL policies. The Department said in an August 10 letter to several people who requested the information through public-records requests that the information was exempt from public disclosure under the state's trade-secrets practices law. John Hancock had asked that the records submitted to the Department be exempted from public disclosure under the New York Public Officers Law. That statute provides an exception from disclosure for records that are trade secrets or are submitted to an agency by a commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise. John Hancock submitted several statements of necessity asserting that the records include pricing methodologies and assumptions used to calculate proposed changes to COI rates for universal policies. The records revealed to the Department the underlying assumptions and components of John Hancock's pricing practices, for which John Hancock has invested substantial resources to develop. The company explained that the release of those records would place John Hancock at an unfair competitive disadvantage, since competitors would adjust their own internal pricing methods should the company methodologies be publicly revealed. The department agreed that disclosure of pricing methodologies and assumptions would cause the company to suffer substantial competitive injury. A competitor who obtained the company's pricing methodologies would receive a windfall since it only would have paid a minimal fee, if any, to obtain information that John Hancock spent substantial amounts to develop. In addition, the release would create an uneven playing field, as the carrier doesn't possess the internal methodologies and assumptions of its competitors. Thus, disclosing the records that John Hancock submitted to the Department in their entirety would unfairly benefit John Hancock's competitors, while causing John Hancock to suffer substantial injury of its competitive position. The public-records requests apply to the COI increase on Performance UL policies, which was reported upon in January before it even occurred. In May, John Hancock sent letters to policyholders saying that it was implementing the increase on the Performance UL policies. A class-action suit against John Hancock was filed June 5 over a COI increase of up to 71% on about 1,500 Performance UL policies. In July, a preliminary settlement of a class-action case against John Hancock for $91.25 million was announced in which plaintiff alleged the rate should be rolled back because mortality experience was improving. It impacts about 80,000 policyholders, many of them seniors.

July 2018

John Hancock's Settlement in Cost-of-Insurance Lawsuit May Be Bad Omen By Arthur D. Postal July 25, 2018 **: John Hancock Life Insurance Co.** agreed to settle a class action lawsuit over monthly policy charges, in what suggests widening risk for insurers already battling a spate of such cases. The Boston-based company will pay $91.25 million to resolve the suit brought by 37 Besen Parkway LLC, according to a filing in federal court for the U.S. Southern District of New York. While many similar “cost of insurance” cases are reactions to hefty premium increases that can be more than 100%, Besen Parkway simply sought a reduction for existing rates. The plaintiff alleged the carrier charged “unlawful and excessive” expenses for cost of insurance for universal life policies, considering improvements in mortality rates…John Hancock has also been sued over the amount of premiums on its Performance universal life policies, Brohawn said, but that occurred after the carrier lifted rates. The universal life contracts in the Besen Parkway case explicitly promised that monthly rates would be based on the company’s “expectations of future mortality experience,” according to the court filing. In fact, John Hancock had a “mutual and reciprocal commitment” with the policyholders, according to the original lawsuit. They would agree to let the insurer charge more to cover the cost of insurance if mortality worsened, but if it improved, John Hancock was supposed to decrease rates. “John Hancock, however, has failed to live up to its end of the bargain,” according to the suit. Even though client mortality was much better than expected, John Hancock didn’t reduce the rates, even though the carrier “contractually promised” to review them at least once every five years. While the settlement doesn’t establish legal precedent, it could embolden lawyers to widen their scope in filing cost-of-insurance lawsuits. The settlement fund will be used to compensate tens of thousands of elderly policyholders, according to the court filing. Lawyers for the plaintiffs said they then reviewed and analyzed more than 340,000 pages of documents, including more than 2,000 spreadsheets. They spent 23 days onsite at John Hancock’s offices in Boston. They took 16 “highly technical depositions” covering insurance financial reporting, statutory accounting, mortality tables, and actuarial science, the filing said. That led to a mediation session on May 24, 2018, which took place before Theodore Katz, a retired magistrate judge. The case was originally filed in 2015.

"Insurers, Life Settlement Firms Clash Over UL Cost-of-Insurance Hikes"

Think Advisor (07/16/18) Bell, Allison: Life settlement industry players want state lawmakers to do something about life insurers' wave of universal life (UL) cost-of-insurance increases. State lawmakers are not convinced that this is the right time for them to weigh in. The National Council of Insurance Legislators (NCOIL) Life Insurance and Financial Planning Committee gave life settlement industry representatives and a representative from the American Council of Life Insurers (ACLI) a chance to talk about the issue at NCOIL's spring meeting, in Atlanta. Kate Kiernan, a vice president at the ACLI, told NCOIL members that well-established state non-forfeiture benefits rules already help consumers get some cash back when they drop UL policies. The math for valuing non-forfeiture amounts is different for the consumers than it is for life settlement companies, because life settlement companies have spent more cash than the original policyholder insureds have, Kiernan said. That gap is not the life insurers' fault, and insurers should not have to pay for the life settlement companies' bad bets, Kiernan said, according to the meeting minutes.

June 2018

John Hancock Sued Over Cost-of-Insurance Rate Hike: A class-action suit has been filed against John Hancock for raising cost-of-insurance rates on Performance UL policies. The insurer began notifying policyholders last month that it planned to raise rates on about 1,500 policies. The Susman Godfrey LLP law firm, which has sued other insurance companies over similar increases and has won a $130 million class-action settlement in a COI case against Phoenix Companies, filed the complaint on June 5 in U.S. District Court for the Southern District of New York in Manhattan. It alleges the rate increase was based on impermissible factors, applied in a discriminatory manner, intended to recoup past losses rather than to respond to future expectations of mortality and neglected to take into account a beneficial tax reduction due to the federal tax reform measure enacted last year. The plaintiffs are Jeffrey Leonard, trustee of the Poplawski 2008 Insurance Trust, Phyllis Poplawski of California and PBR Partners of New York on behalf of themselves and others similarly situated. The suit further claims that the COI increases range from 17% to at least 71%, saying "there is no reason given by John Hancock for the wildly disparate COI increases." In the case of one of the plaintiffs, Phyllis Poplawski, the increase on her $10 million policy issued in California would amount to $225,000 more a year, or an increase of about 70% more. She took out the policy in 2008 and now is 86, an age when finding a replacement policy would be prohibitively expensive, the suit said. The other plaintiff is PBR Partners of New York, owner of a policy facing a 17% COI increase on an insured with the last name of Jacobs. A $10 million policy was issued on Jacobs when he was 73 in 2006. The policies allow such rate increases to be based on the insurer's expectations of future mortality, persistency, investment earnings, expense experience, capital and reserve requirements and tax assumptions, the suit said. But John Hancock's letter to agents only said the COI increases were being made based on its expectations of future mortality and lapse experience, the suit said. However, it said mortality experience has continued to improve and thus the rates should have been decreased. The complaint further claimed that the carrier's allegedly deteriorating lapse experience can't be used to justify an increase, much less one of the size it's seeking. In addition, John Hancock has ignored other enumerated factors that also should have led to lower rates such as the U.S. tax cuts that will save the company $240 million a year, the suit further said. The suit also alleged that John Hancock's illustrations sent to plaintiffs were not based on permitted factors and thus didn't validly project future policy values. It also claimed that the insurance company refused to provide an illustration on a policy upon request. The suit alleges breach of contract, violation of New York insurance law and violations of California's unfair competition and elder abuse laws. In notifying a servicer in the life settlement market of the increase in a May letter, John Hancock said it hadn't been able to provide illustrations since January 2017 on about 4,000 Performance UL policies issued between 2003 and 2010 until it reviewed its experience, which had been completed. Eight other carriers have raised COI rates during the past 2.5 years: Phoenix, Transamerica, Lincoln National, Voya, Legal & General America subsidiaries Banner Life and William Penn Life, Conseco Life and AXA.

AXA Seeks Dismissal of Cost-of-Insurance Rate Hike Suit: Alberta Investment Management is fighting a rate increase of more than 40% that would cost it $200 million more in premiums. AXA, in a June 15 filing in the U.S. District Court for the Southern District of New York in Manhattan, argued that claims for common law fraud and violations of various state consumer protection laws should be dismissed with prejudice. AXA noted that it and the plaintiffs previously stipulated to apply the court's prior rulings in related actions to dismiss a number of claims alleged in the amended complaint as well as a second amended complaint. At issue are COI rate increases of more than 40% for 53 Athena Universal Life II policies issued by AXA between 2005 and 2007, which were purchased by investors. Alberta Investment Management and Wells Fargo Bank NA, a securities intermediary for two entities, alleged in a March lawsuit that the rate increase could cost about $200 million in additional premiums through maturity and amounted to what it viewed as excessive. Alberta Investment Management, which has more than $95.7 billion in assets under management, sued under the names LSH Co. and LSH II Co. They are indirectly owned by the investment manager. The Luxembourg-domiciled entities own 53 policies ranging from $1.8 million to $25 million in face value for a total of $356.69 million in face amount. The plaintiffs alleged the rate increase was intended to force them to either pay exorbitant premiums that AXA knew would devalue the policies or force them to lapse or surrender the policies and forfeit premiums they've paid for years. The suit said that AXA's purported justification for making the increases was based on mortality and investment income experience for the policies, which were "supposedly less favorable than expected." It said, however, those reasons were not true because AXA has experienced neither higher mortality rates, nor lower investment income for the policies. The investment management group said the increase breaches the terms of the policies because it wasn't equitable to all policyholders in the same class, it was not based on reasonable assumptions of expenses -- mortality, policy and contract claims, taxes, investment income and lapses. The insurer urged the court to dismiss the fraud claim because the plaintiffs failed to show that AXA intended to deceive them. It said illustrations provided by the carrier disclosed that policy account values didn't guarantee future performance and were based on current COI charges, or the mortality costs, which could change at any time. AXA also said that plaintiffs can't point to any requirement that AXA must disclose confidential internal mortality assumptions or deliberations about potential future COI changes.

May 2018

Why Life Insurance Portfolios Must Be Audited: There's a problem brewing with company-sponsored life insurance and the problem seems to be worsening. Each life insurance policy "illustrates" at the time of purchase its expected future performance, which will be driven by the insurer's returns on its investments of the insured's premiums as stipulated in the policy. Because life insurance policies can be in force for decades, the illustration may —in fact, it likely will — prove inaccurate. If a policy initially illustrated at, say, a 7% annual return but is performing at only a 4% rate, the policy won't achieve its goals for the company or executive. Many company-sponsored policies, purchased 20 or 30 years ago when interest rates and investment returns were substantially higher, are significantly underperforming today, expert observers say. Companies could have mitigated or eliminated that problem by regularly watching a life insurance policy's performance starting with the policy's inception. Then, if necessary, adjustments could have been made, such as putting more cash into the policy or limiting the portion of returns that could be extracted from the policy to pay for premiums. But companies often failed to do that, and their lax monitoring is ongoing. It's an odd failure, considering the money potentially at stake. In particular, it's not uncommon for owners of closely held companies to hold $50 million or $100 million life insurance policies. For such owners, life insurance placed into an irrevocable trust can be a very practical estate-planning investment. For example, the company can assume responsibility for paying the premiums. Then, upon the executive's death, the company can get back a portion of the premiums under what's known as a split-dollar arrangement. The rest of the policy's value is distributed to the executive's beneficiaries. Liazos' advice for companies is simple. "If you have an insurance policy portfolio, have somebody come in and audit them to see whether they're doing what they're supposed to be doing," he says. Consultants, rather than law firms, typically perform the auditing services. Part of that problem, as manifested today, is indeed traceable to the flatlining of interest rates in recent years but Silver also places a share of the blame on the life insurance industry. "Traditionally, life insurance is not serviced well," she says. "Most of the brokers are on commissions, so their compensation is based on whether something sells, and there's not much focus on servicing." Auditing a life insurance portfolio involves requesting lots of information from the insurance carrier or carriers. That starts with the simple matter of who owns the policy and who the beneficiaries are. The audit also includes looking at the premium history from the outset of the policy; an analysis of how long the policy would stay in force if lower premium payments were made; what premiums would be necessary to keep the policy in force through different age thresholds for the insured; and analysis of the carrier's financial strength.

April 2018

Advance Trust Files Cost-of-Insurance Suit Against Phoenix: A new class-action lawsuit has been filed against PHL Variable Life Insurance Co. for allegedly raising cost-of-insurance rates in an unlawful and discriminatory manner. Susman Godfrey, the same law firm that previously won a $130 million class settlement against the insurer, is representing the plaintiff. Phoenix settled similar class-action litigation in September 2015 for about $130 million, requiring it to freeze any proposed future increases through Dec. 31, 2020, on class members. The latest suit was filed Thursday, April 19, in the U.S. District Court for the Southern District of New York in Manhattan. The plaintiff is Advance Trust & Life Escrow Services, nominee of the Life Partners Position Holders Trust, which is managing policies on behalf of investors who bought fractional interests from the now-defunct Waco, Texas, life settlement provider. The 28-page complaint noted when the Phoenix first raised the COI rate, or mortality charge, in 2010 on Phoenix Accumulator Universal Life policies, the New York Department of Financial Services, the California Department of Insurance and the Wisconsin insurance commissioner said it was illegal. Phoenix also raised COI rates a second time -- in 2011. Policyholders were notified of a third COI increase last August. The suit said the raises are discriminatory because they would apply to policies on insureds between the ages of 71 and 85, who are not in a separate class of policyholders. The suit further alleged that the rebate for the unnamed institutional owners also was discriminatory because Phoenix was cutting a special side deal for them. Any COI rate increases must be based on mortality, persistency, investment earnings and expenses, the suit said, adding that some of the policies had been issued as recently as 2014. "There is nothing that has changed between 2014 and 2017 that would merit a new COI rate increase," the suit claimed. It said mortality has been improving at the rate of about 1% a year and five-year Treasury rates are now higher than they were in 2014.

Alberta Investment Management Sues AXA Over 40% Cost-of-Insurance Rate Hike: Alberta Investment Management, which has more than $95.7 billion in assets under management, sued under the names LSH Co. and LSH II Co. Thursday, March 8, in U.S. District Court for the Southern District of New York in

Manhattan. LSH Co. is an indirectly owned subsidiary of Alberta Investment Management, acting as investment manager for Her Majesty the Queen in Right of Alberta, Canada. The Luxembourg-domiciled entities own 50 policies ranging from $1.8 million to $25 million in face value for a total of $356.69 million in face amount. Wells Fargo Bank NA, a securities intermediary for the two entities, also was named as a plaintiff. It alleges it would cost almost $200 million in additional premiums on its 50 policies to maturity. The rate would go up by at least 40% on the mortality expense for its policies and would cost almost $200 million in premiums through maturity on the 50 policies its holds, the investment management firm said. The suit pointed out that AXA stated in a 2015 filing with the SEC that it expected the COI rate increase to result in $46 million in net earnings alone that year. But AXA reported later that it had realized a $46 million increase in the first nine months of 2015 alone. The suit said that AXA's "purported justification" for making the increases was based on mortality and investment income for the policies, which were "supposedly less favorable than expected…These stated reasons by AXA, however, were and are false, as AXA has experienced neither higher mortality rates, nor lower investment income for all AUL II policies," the suit added. The Alberta group said AXA also never explained to policyholders how its mortality and investment income assumptions had changed. The insurer has not publicly disclosed any of its revised COI rates or documents supporting its decision to raise rates and has opposed public disclosure of any analyses that could support such an increase, the suit further said. The investment management group said the increase breaches the terms of the policies because it wasn't equitable to all policyholders in the same class, it was not based on reasonable assumptions on expenses -- mortality, policy and contract claims, taxes, investment income and lapses.

March 2018

NCOIL Puts Model Act to Curb Cost-of-Insurance Increases on Hold: A model law to curb cost-of-insurance rate increases has been put on hold by the National Council of Insurance Legislators, although it had previously called them "unjustified." After listening to discussion Saturday, March 3, by a panel of speakers at an Atlanta conference, NCOIL's Life Insurance & Financial Planning Committee agreed not to pursue a model act at this time.

<END>