

# SDNY Ruling Narrows Claims in COI Suit

March 31, 2018

In *EFG Bank AG, Cayman Branch v. AXA* and *The Duffy 2004 LLC v. AXA*, in a February 14 ruling, AXA Equitable Life Insurance Company earned a sweet victory on its motion for partial dismissal of the complaints in two consolidated proceedings actions challenging its COI rate increases. The Southern District of New York dismissed the plaintiffs' breach of implied covenant of good faith and fair dealing claims (both contractual and tortious) and requests for punitive damages and declaratory relief. AXA did not move to dismiss the plaintiffs' express breach of contract claim. Its narrowly focused motion succeeded in all respects. The contractual implied-covenant claims were dismissed as duplicative of the express breach of contract claim. Notably, the court distinguished these cases from prior COI opinions, denying defendants' motions to dismiss and stating: "the policies at issue in those cases did not explicitly constrain the insurers to apply COI increases 'equitably' or use only 'reasonable' assumptions in increasing COI rates .... Thus, the plaintiffs could state implied-covenant claims by alleging that the defendants had 'exercis[ed] their limited discretion under the Policies in an unreasonable and unfair manner.'" The AXA policies, however, "expressly required AXA to exercise its discretion reasonably and equitably" when changing policy cost factors. The tort-based implied covenant claims were dismissed under California law. The court recognized that "an insured cannot maintain a claim for tortious breach of the implied covenant of good faith and fair dealing absent a covered loss." It found that plaintiffs' claims "do not allege that AXA has withheld insurance benefits owed under the policies." Due to its dismissal of the tort claims (in this ruling), the court also dismissed the plaintiffs' requests for punitive damages, as that relief was sought only in connection with plaintiffs' tort claims. Finally, as other district courts have done in recent COI action rulings, the court exercised its discretion to entertain declaratory relief claims consistent with the Declaratory Judgment Act, or to decline to do the same, and dismissed the plaintiffs' declaratory relief claims as duplicative of the breach of contract claim.

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