

# Universal Life Policyowner Not Entitled to Pro Rata Premium Refund Following Insured's Death

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Insured's annual planned premium did not implicate New York statute requiring refund of premium "actually paid for any period" beyond an insured's death.

Lincoln Life & Annuity Company of New York recently secured a significant victory in a putative class action pending in the U.S. District Court for the Southern District of New York in *Nitkewicz v. Lincoln Life & Annuity Company of New York*.

The plaintiff, a trustee for the Joan C. Lupe Family Trust, sued Lincoln alleging that it breached its universal life insurance policy by failing to refund a pro rata portion of the annual planned premium to the plaintiff following the insured's death, as required by New York Insurance Law section 3203(a). Lincoln moved to dismiss, arguing that the plaintiff was not entitled to a refund because the planned premium was not "actually paid" for "any period" as statutorily required.

The court agreed and granted Lincoln's motion to dismiss. The court noted that a "close reading of the statutory text and the Policy reveal that, for a universal life insurance policy crafted like the one at issue here," any "planned premium" is not paid for any specific period of coverage, but instead refers to how often the policy owner intends to pay. The court explained that "[w]hen read in conjunction with the term 'for any period,' the phrase 'actually paid' serves to further distinguish between payments promised and payments that have actually paid for a period of coverage." The court held that planned premiums are simply a statement of intent regarding the anticipated frequency of payments and function to increase the policy's account value; the funds do not actually "pay" for any insurance until they are taken from the policy account through the monthly deduction to satisfy the policy's cost of insurance charges.

The court noted that while the plaintiff could have chosen a death benefit option that would have paid the death benefit, plus the account value, upon the insured's death, the plaintiff chose not to do

so. Instead, the plaintiff elected the death benefit option that provided only the stated death benefit amount — and any planned premium deposited into the policy account would not be refunded. Accordingly, the court stated it would not “invalidate Plaintiff’s [death benefit] election” to trigger a refund.

The plaintiff has appealed the decision to the Second Circuit Court of Appeals. Stay tuned for updates.

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