

# Insurer Must Consider “Expectations of Future Mortality Experience” When Reassessing, Redetermining, and Changing COI Rates

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In *Advance Trust & Life Escrow Services, LTA v. Protective Life Insurance Co.* (Mar. 2, 2024), the Eleventh Circuit Court of Appeals affirmed in part and reversed in part the district court’s dismissal of breach of contract claims regarding an insurer’s cost of insurance (COI) determinations. In particular, the Eleventh Circuit rejected claims that the policy required the insurer to “reassess and redetermine” its COI rates at some unspecified interval(s) based exclusively on “expectations of future mortality experience.” However, the court reversed dismissal of the plaintiff’s alternative theory that the insurer ignored “expectations as to future mortality experience” when “reassess[ing], redetermin[ing], and chang[ing]” its COI rate scale. The crux of the plaintiff’s complaint concerned allegations of improving nationwide mortality rates since 2012. From that premise, the plaintiff alleged two theories against his insurer. First, the plaintiff claimed that the policy required his insurer to revisit COI rates considering only expectations regarding future mortality experience, but the insurer had never done so and continued using its initial rates, which included other factors, such as expenses and lapse rates. Second, the plaintiff claimed in the alternative that his insurer had in fact revisited and changed COI rates but, in so doing, ignored expectations of future mortality experience. The defendant moved for judgment on the pleadings, arguing that the policy language precluded the plaintiff’s theories. The district court granted that motion. On appeal, the Eleventh Circuit affirmed the dismissal of the plaintiff’s first theory. The court surveyed a circuit split, dictionary definitions, and the policy as a whole, and, applying South Carolina law, determined that the policy neither required the insurer to revisit COI rates at monthly or other intervals nor to consider only expectations regarding future mortality experience. Concerning the plaintiff’s second theory, the court explained that, under the policy’s language, the insurer’s expectations regarding future mortality experience constituted the “main or principal ingredient” for redetermining COI

rates. As a result, if the insurer undertook COI rate redeterminations, it was required to consider those expectations as part of the process. Thus, the court reversed to allow the plaintiff to pursue his second theory, noting: “While it remains to be seen what can be proven, at this pleading stage [the plaintiff’s] complaint states a breach of contract claim to that extent.”

## Authored By



Clifton R. Gruhn

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