

Read Your Policy Carefully: UL Policy's Plain Language Requires Dismissal of Putative Class Action Challenging Increased Premiums and COI Rates

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The Southern District of Indiana recently dismissed a putative class action alleging that the defendant-insurer improperly inflated premiums and cost of insurance (COI) rates on universal life policies.

In *Couch v. Wilco Life Insurance Co.*, the plaintiff's universal life insurance policy, purchased in 1987 from a predecessor of Wilco Life Insurance Co., included a monthly planned premium of \$81. Steadily, Wilco increased the plaintiff's premium to more than \$270 per month, which Wilco assessed directly from the policy's cash value. But the plaintiff failed to maintain sufficient cash value, causing the policy to lapse. The plaintiff then filed suit for breach of contract and declaratory judgment, asserting, among other claims, that Wilco improperly increased his premiums and used impermissible factors in determining COI rates. Wilco moved to dismiss, arguing that the policy clearly explained that premiums and COI rates could increase over time.

In dismissing the plaintiff's breach-of-contract claim, the court determined that Wilco could charge more than the \$81 planned premium; the policy's plain language stated that the premium required to keep the policy in force might increase, given rising COI rates, which naturally increased as the plaintiff aged.

Similarly, the court found that Wilco could consider factors other than those tied to an insured's mortality when setting COI rates, as the policy provided only two limitations on Wilco's determination of COI rates:

1. that the rates not exceed those set forth in the policy's table of guaranteed rates; and
2. that any change in COI rates would apply uniformly to similarly situated policyholders.

The plaintiff did not contend Wilco breached either of those requirements. The court distinguished cases involving COI provisions that included “based on” or “depend on” language, but it determined that even if the policy included such language, the Seventh Circuit's decisions in *Thao v. Midland National Life Insurance Co.* and *Norem v. Lincoln Benefit Life Co.* would require dismissal of a claim that Wilco could consider only those factors listed in his policy when setting COI rates.

Finally, the court exercised its discretion to dismiss the plaintiff's declaratory-relief claim, finding that the plaintiff's request for declarations regarding the COI rates was duplicative of the dismissed breach-of-contract claims. Because the policy's unambiguous language precluded the plaintiff's claims, the court ultimately dismissed the case with prejudice.

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