

# Class Certification Denied in Universal Life “Risk Rates” Litigation

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Individualized defenses and choice-of-law issues played a key role in preventing class certification in a recent challenge to a life insurer’s discretion to adjust its “risk rates” on universal life (UL) insurance policies.

In *Taylor v. Midland National Life Insurance Co.*, the plaintiff challenged the insurer’s calculation of a “monthly deduction” from the account value of its UL policies. The monthly deduction was the sum of an “expense charge” and a “risk charge.” In calculating the “risk charge,” the insurer applied a “risk rate”; increase of the risk rate would also increase the risk charge, which, in turn, would increase the monthly deduction. The UL policies provided that the “risk rate” was based on the “Attained Age, sex, and Premium Class of the Insured” and that “Risk Rates are declared by Us based on Our expectations of future mortality experience.”

The plaintiff argued that the insurer breached its UL policies by including non-mortality factors — such as variations in funding patterns, surrender behavior, operating expenses, and investment returns — in its risk rate, and by not adjusting its risk rates downward as its mortality expectations allegedly improved.

In May, a federal district court in Iowa denied the plaintiff’s motion for certification of a nationwide class, concluding that the plaintiff failed to satisfy the predominance requirement of Rule 23(b)(3).

## Choice-of-Law Issues

After conducting a detailed choice-of-law analysis, the court determined that the laws of every state in which an insured was domiciled would apply to the class’s claims. In particular, varying state laws regarding admission of extrinsic evidence made the case difficult to maintain as a nationwide class action. The UL policies at issue were sold through independent agents. The potential for a “parade”

of testimony from agents regarding the parties' understanding of the policies' terms, their sales presentations, and their discussions of policy features created individual issues that predominated over common ones.

## Statute of Limitations Defense

Moreover, it was undisputed that the insurer had stopped selling the UL policies at issue at least a decade before the action commenced and that former policy owners comprised the majority of the putative class. As such, the class had to overcome the insurer's statute of limitations defense. Although the court concluded that Iowa's statute of limitations applied uniformly to the class, the plaintiff's effort to avoid the defense by alleging equitable tolling created individualized issues that barred certification. The plaintiff argued that the putative class's claims should not be time-barred because the insurer concealed the factors it used to determine its risk rates from the class. But the record lacked any basis to conclude that the alleged fraudulent concealment could be shown by common proof; instead, the record suggested that agents may have given varying sales presentations and different explanations of how risk charges and risk rates were determined to class members, again creating individualized issues.

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