

## **Life Insurer's Early Dispositive Motion Achieves Narrowed Fraud Claim in COI Suit**

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A recent decision by a federal district court in Maryland further illustrates the elusive nature of early dismissal of claims in far-reaching suits challenging the cost of insurance rate increases – even when some success is achieved via the rejection of underlying theories of liability. In *Rich v. William Penn Life Insurance Company of New York*, the plaintiff brought putative class breach of contract and fraud claims against William Penn arising from a COI rate increase announced in 2015 on certain universal life policies.

The gist of the fraud claim is that the COI rate increase was implemented to address alleged financial difficulties the insurer had been suffering for years, and that the insurer had misrepresented or failed to disclose these facts to policyholders before the announcement of the change in rates. Plaintiff alleged that he would have stopped paying premiums had the true nature of the defendant's financial condition been revealed. He also alleged that the insurer had used reinsurance transactions to disguise its financial instability.

In a September 25 ruling on its motion to dismiss the fraud claim, the district court rejected William Penn's arguments that the plaintiff lacked standing, New York's six-year statute of limitations barred the claim, and the elements of fraud were insufficiently alleged. However, with regard to its argument that the fraud claim was barred by New York's source of duty and economic loss rules, the insurer narrowed the scope of the claim. According to the plaintiff, there were three sources of William Penn's misrepresentations and omissions about its financial condition: the COI rate increase notification letter, the policy statements issued to putative class members, and the defendant's corporate reports and website.

The court dismissed the allegations predicated on the notification letter under both the source of duty and economic loss rules, because the alleged damages were the same as those sought in the breach of contract claim, and the "source of the duty" breached was the policy, not the notification letter. However, relying heavily on *Dickman v. Banner Life Insurance Company*, a previous decision in the same court on similar claims alleged against the defendant's parent corporation, the court refused to dismiss the fraud claim to the extent it was based on policy statements and William Penn's corporate reports and website. The court found that there was a plausible separate tort duty to avoid misrepresenting information in policy statements, which was not tied to the policy terms. Additionally, the court determined that the allegations relating to the corporate reports and website were analogous to a fraud-in-the-inducement claim, which would not be barred by either the source of duty or economic loss rule.