

**Seventh Circuit Rules in Favor of Life Insurers on Cost of Insurance Class Action Claims**

**Norem v. Lincoln Benefit Life Co.,
No. 12-1816, 2013 WL 6512923 (7th Cir. Dec. 13, 2013)**

and

**Thao v. Midland National Life Insurance Co.,
Nos. 13-1272, 13-2366, 2013 WL 6512117 (7th Cir. Dec. 13, 2013)**

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Two recent Seventh Circuit decisions issued on the same day resolved the issue of whether insurers may calculate cost of insurance rates based on factors in addition to those enumerated in universal life insurance policies. Indeed, the court acknowledged that such a calculation based solely on the enumerated factors in the policies at issue is unreasonable. In *Norem v. Lincoln Benefit Life Co.*, No. 12-1816, 2013 WL 6512923 (7th Cir. Dec. 13, 2013), a variable life insurance policyholder brought a putative class action,¹ asserting the insurer breached its variable universal life insurance policies by incorrectly calculating the cost of insurance rate ("COI"). The plaintiff's policy provided that the COI rate was calculated by the insurer and then multiplied by the "net amount at risk" to determine the COI charge. The policy also stated "[t]he cost of insurance rate is based on the insured's sex, issue age, policy year, and payment class. The rates will be determined by [the insurer], but they will never be more than the guaranteed rates shown" in the policy. *Id.* at *1. The plaintiff alleged the insurer breached the policy by considering factors in addition to the insured's sex, issue age, policy year, and payment class. These additional factors included "expected policy lapse rates, agent commissions, and anticipated death benefit costs." *Id.*

Applying Illinois law, the Seventh Circuit affirmed summary judgment for the insurer, holding that it did not breach the policy's terms by calculating the COI rate with factors beyond those enumerated in the policy. Specifically, the Seventh Circuit noted that the phrase "based on" did not equal "exclusivity," and that the policy did not specify that the enumerated factors were "the sole or exclusive components of the COI rate." *Id.* at *4. Moreover, the court noted that "it is impossible to generate a numerical COI rate based solely on an individual's sex, issue age, policy year, and payment class without some sort of mathematical formula or underlying data and assumptions." *Id.* at *6. In addition, the court rejected the plaintiff's argument that applying the additional factors amounted to "double-dipping" with respect

to other listed charges such as administrative expenses in the policy. The court held that "this argument fails for the simple reason that the policy does not in fact tether certain expenses to the specific listed charges within the policy." *Id.*

On the same day, the Seventh Circuit issued *Thao v. Midland National Life Insurance Co.*, Nos. 13-1272, 13-2366, 2013 WL 6512117 (7th Cir. Dec. 13, 2013). That case, in which the court applied Wisconsin law, followed the reasoning in *Norem* and held that the insurer did not breach the plaintiff's universal life insurance policy by using factors in addition to those enumerated in the plan for calculating the COI rate. Further, the court held that reversal of the district court's denial of the plaintiff's motions for class certification was "moot for all intents and purposes." *Id.* at *3. Specifically, the court noted that because the plaintiff lost on the merits, "reversal of the district court's class certification decision would only work to the disadvantage of other class members." *Id.* In addition, it noted the insurer expressed no interest in class certification. *Id.*

These well-reasoned decisions should provide strong persuasive authority for other jurisdictions in which the issue of calculations of cost of insurance rates based in part on unenumerated factors remains unresolved.

¹Because neither party raised the issue of class certification on appeal, the court did not address the district court's granting of summary judgment in the insurer's favor before ruling on class certification. *Id.* at *1 n.1.

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