SUSMAN GODFREY LLP

# COI LITIGATION

STEVEN G. SKLAVER

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HOUSTON LOS ANGELES SEATTLE NEW YORK

# Aetna/VOYA COI



**Policy Values**

**Cash Value** The cash value on the Date of Issue will be the first premium paid less the monthly deduction for the first month.

The cash value after the Date of Issue and before the Maturity Date will be (a) minus (b) where

(a) is the sum of

(1) the cash value on the last previous monthly deduction day with interest to date; and

(2) premiums paid since the last previous monthly deduction day with interest to date;

and (b) is the sum of

(1) any withdrawals since the last previous monthly deduction day with interest to date; and

(2) the monthly deduction for the month which is then starting, if the date of calculation is a monthly deduction day.

**Interest Rate** Ætna will credit interest on the cash value at not less than the guaranteed rate. The guaranteed rate is 0.36748% per month, compounded monthly. This is equivalent to 4½% per year.

Ætna may credit interest at a rate in excess of the guaranteed rate.

Excess interest will not be credited to any portion of the cash value which is used to secure a loan balance.

**Cost of Insurance Rate** The Monthly Cost of Insurance is based on the Insured's sex, attained age and premium class. Attained age means age on the birthday nearest the first day of the policy year in which the monthly deduction day occurs. For the Initial Specified Amount, the premium class on the Date of Issue will be used. For each increase, the premium class for that increase will be used.

The monthly Cost of Insurance rates may be adjusted by Ætna from time to time. Adjustments will be on a class basis and will be based on Ætna's estimates for future cost factors, such as mortality, investment income, expenses and the length of time policies stay in force. Any adjustments will be made on a uniform basis. However, the rate during any policy year may never exceed the rate shown for that year in the Table of Guaranteed Maximum Insurance Rates in this policy. Those rates are based on the 1958 Commissioners Standard Ordinary Mortality Table, male or female.

# 100% Indemnity Reinsurance - Lincoln

- Indemnity v. Assumption Reinsurance
- 1998 Transaction – 100% Indemnity
- $1 billion purchase price

# NYDFS Protects Aetna/VOYA Customers in NY

NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

December 5, 2016

**VIA E-MAIL**

from the beginning that, in order to demonstrate compliance with standards set forth in the Insurance Law, Voya should provide:

4) Confirmation that the classes of policyholders upon which the proposed increased COI are to be assessed comport, to the extent practicable (*e.g.* 5-year age bands), with the

aetna

iterations of proposed COI increases with multiple insurers. The Department has made clear from the beginning that, in order to demonstrate compliance with standards set forth in the Insurance Law, Voya should provide:

1) A comparison of the original COI and the proposed COI, with a clear illustration of the credible experience *from Voya* that justifies the proposed increase;

3) Confirmation that only eligible criteria under §4232(b) are used as experience factors to determine the credible experience, not including reinsurance (*i.e.*, investment experience, mortality, persistency and expenses);

not established. Nor can we conclude that a single cohort is appropriate; a single cohort was clearly not the class determined at the time the policies were originally sold and would not be the reasonable expectation for the consumer based on the policy language. Establishing a single cohort as the class would be inconsistent with §§ 4232 and 4224 and may, if acted upon, constitute an unfair and deceptive trade practice under Article 24.

# NYDFS Protects Phoenix Customers in NY

NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

When we spoke while during the NAIC Summer National meeting you said that the upcoming COI increases would only be at PHL Variable and not Phoenix Life Insurance Company. We didn't expect New York policyholders to be affected but heard that letters went out in NY that discussed a COI increase. Please give me a call or we can schedule a conference call to discuss this issue. If Phoenix is planning rate increases in New York, we would like to see the justification for the increases as soon as possible. Thanks.

**Mark McLeod**
Deputy Chief Examiner – Life Bureau

**NYS Department of Financial Services**

The Department contacted the company to find out whether it was planning to implement COI rate increases in New York and was advised verbally that PLIC had no intention of implementing COI rate increases in New York.

# NYDFS Protects JP (Lincoln) Customers in NY

- “the Jefferson Pilot [2016 and 2017] increases were never pursued in New York”
  - NYDFS FOIL Response (9/1/17)

# JP (Lincoln) COI: Contract Language

JEFFERSON PILOT FINANCIAL

## Nonforfeiture Provisions

**Policy Value** On each monthly anniversary day, the policy value will be (1) plus (2) plus (3) plus (4) minus (5), where

(1) is the policy value as of the preceding monthly anniversary day minus the monthly deduction for the month ending on the monthly anniversary day.

(2) is one month's interest on (1).

(3) is all net premiums received since the preceding monthly anniversary day.

(4) is interest on (3) from the date the premium is received to the end of the policy month.

(5) is the reduction in policy value caused by any partial surrender since the preceding monthly anniversary day.

On any day other than a monthly anniversary day, the policy value will be (1) minus (5) where

(1) is the policy value as of the preceding monthly anniversary day minus the monthly deduction for the current policy month, with

(5) defined as above.

In addition, on surrender we will refund any premium received since the preceding monthly anniversary day.

The policy value on the policy date, after payment of the initial premium, will be the net premium.

**Net Premium** Each net premium will be computed by multiplying each gross premium by the guaranteed net premium factor shown on page 4. A higher net premium factor may be applied as determined by us.

**Interest Rate** The guaranteed interest rate credited in the calculations described above is shown on page 4. Interest in excess of the guaranteed rate may be applied as determined by us. Such interest is referred to in this policy as excess interest. The excess interest rate to be credited for the prior policy month will be determined on the monthly anniversary day. No excess interest will be credited on any policy value held as security for a policy loan.

**Monthly Deduction** The monthly deduction for a policy month will be computed as (1) plus (2) where

(1) is the cost of insurance and the cost of additional benefits provided by rider for the policy month.

(2) is the sum of all administrative charges for the policy and any attached riders shown on page 4 as being due for the policy month.

If there is an increase in the Specified Amount, additional charges may be in effect for the increase. If there is an additional charge in effect for an increase in Specified Amount, a new schedule of charges will be provided after such increase.

**Cost of Insurance** The cost of insurance is determined a monthly basis as the cost of insurance rate for the mon multiplied by the number of thousands of net amount at ri for the month. The net amount at risk for a month is computed as (1) minus (2) where

(1) is the death benefit for the month before reduction fo any indebtedness, discounted to the beginning of the month at the guaranteed interest rate.

(2) is the policy value at the beginning of the month.

For months in which Death Benefit Option I is in effect, for purpose of allocating the cost of insurance between differ parts of the Specified Amount, the policy value will be considered as part of the Initial Specified Amount. If such value exceeds the Initial Specified Amount, any excess wi considered part of the earliest addition to the Specified Amount. This allocation will continue in order of all additio to the Specified Amount until all value is allocated.

**Cost of Insurance Rates** The monthly cost of insurance rates are determined by us. Rates will be based on our expectation of future mortality, interest, expenses, and lapses. Any change in the monthly cost of insurance rates used will be on a uniform basis for Insureds of the same r class. Rates will never be larger than the maximum rates shown on page 11. ... mortality table show

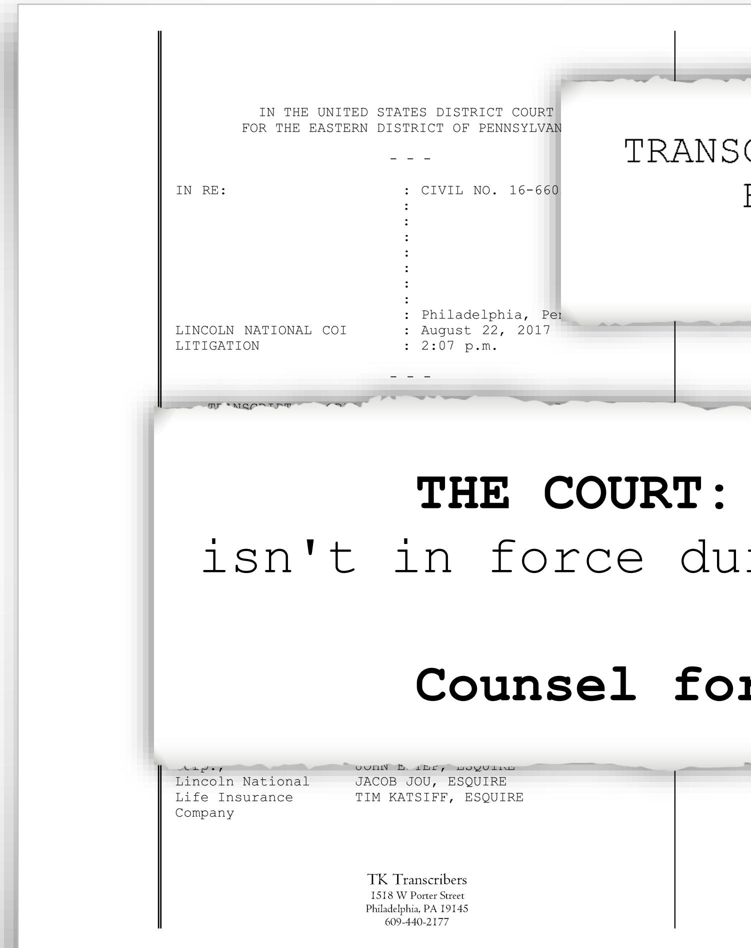
**Continuation of In** ... continue in force ac ... surrender value is s ... such value is not su ... to the grace period ... on any date, the val ... insurance under thi

**Basis of Values** ... mortality assumptio ... The values for this ... required by law. A c ... determine policy va ... state where this pol



**Cost of Insurance Rates** The monthly cost of insurance rates are determined by us. Rates will be based on our expectation of future mortality, interest, expenses, and lapses. Any change in the monthly cost of insurance rates used will be on a uniform basis for Insureds of the same r class. Rates will never be larger than the maximum rates shown on page 11. The maximum rates are based on the mortality table shown on page 4.

# Jefferson Pilot (Lincoln)


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVAN

- - -

IN RE: : CIVIL NO. 16-660

: Philadelphia, Pe
LINCOLN NATIONAL COI : August 22, 2017
LITIGATION : 2:07 p.m.

- - -

Lincoln National JACOB JOU, ESQUIRE
Life Insurance TIM KATSIFF, ESQUIRE
Company

TK Transcribers
1518 W Porter Street
Philadelphia, PA 19145
609-440-2177

TRANSCRIPT OF ORAL ARGUMENT ON MOTION TO DISMISS
BEFORE THE HONORABLE GERALD J. PAPPERT
UNITED STATES DISTRICT JUDGE

**THE COURT:** And your argument is the policy isn't in force during the grace period?

**Counsel for Lincoln:** Correct.

Aug. 22, 2017 H'rg Tr. at 49:21-23

# NYDFS – pre-reg 210: AXA COI

- AXA COI Increase (AUL II)
- Only on policies 70+ issue age, $1+ mm face
- Policies issued between 2004 through 2007
- NYDFS: “unobjectionable”

# AXA COI: Contract Language

Changes in . . . cost of insurance deductions . . . will be on a basis that is **equitable** to all **policyholders of a given class**, and will be determined based on **reasonable assumptions** as to . . . **mortality [and] investment income**."

# AXA COI Litigation: Unredacted Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| BRACH FAMILY FOUNDATION, INC., on behalf of itself and all others similarly situated,<br><br>Plaintiff,<br><br>vs.<br><br>AXA EQUITABLE LIFE INSURANCE COMPANY,<br><br>Defendant. | Civil Action No. 16-cv-740<br><br>**FIRST AMENDED CLASS ACTION COMPLAINT**<br><br>**JURY TRIAL DEMANDED** |

Plaintiff Brach Family Foundation, Inc. ("Brach Family"), on behalf of itself and all others similarly situated, for its Complaint against defendant AXA Equitable Life Insurance Company ("AXA"), states as follows:

period. AXA's A/E ratios of issue age 70+ and with more than $1 million in face value show *lighter mortality* than face amounts less than $1 million, yet policies with less than $1 million in face value were not hit with the COI increase. AUL II policies with face amounts between

necessary to keep the policies in-force. Unlike other kinds of whole life insurance that require



4288507v1/015022

# AXA COI Litigation: Unredacted Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRACH FAMILY FOUNDATION, INC., on behalf of itself and all others similarly situated,

Plaintiff,

Civil Action No. 16-cv-740

**FIRST AMENDED CLASS ACTION COMPLAINT**

policyholders of a given class. AXA originally priced its policies by interpolation between ages 75 and 85, thus giving a smooth increment to rates from age 79 to age 80 (and at all ages). However, the new COI increase has been done in a single step, and not subject to interpolation in the same way as the original pricing. AXA's original, smooth interpolation between age 75 and 85 has now been destroyed, and the product is not consistent with the rest of AXA's current pricing methods. Before the COI increase, the cost for an individual with issue age 80 was

# AXA COI Litigation: Unredacted Complaint

37. Tenth, the COI increase is not equitable to policies issued to insureds that are smokers or rated standard. AXA contends that it applied the following percentage haircuts to the 75-80 table in its original pricing: Preferred Plus Non-Smoker 25.2%; Preferred Non-Smoker 33.0%, Standard Non-Smoker 43.8%, Preferred Smoker 77.1%, Standard Smoker 110.4%. These alleged deep haircuts were totally unreasonable at the time of issuance, as the haircut was not applied as a vector of different values at different ages with smaller haircuts at high ages but as a single figure across all ages. In addition, the Preferred Plus Non-Smoker and Preferred Non-Smoker haircuts were far more aggressive than the haircuts provided to insureds rated Standard and/or smokers. The Preferred Plus and Preferred Non-Smoker groups are contributing more, relative to amount of policies in issue, to AXA's alleged profit shortfall as compared to original pricing. Thus, the COI increase imposed on the Standards and smokers unfairly discriminates

BRACH FAMILY FOUNDA
behalf of itself and all others

vs.

AXA EQUITABLE LIFE IN
COMPANY,

Plaintiff Brach Famil
others similarly situated, for
Company ("AXA"), states as

1. This is a class
of life insurance policies i
policyholders who are subject
by AXA. AXA's COI incr
members' insurance policies,
that AXA has knowingly ma
Insurance Law Section 4226.

2. The policies
issued by AXA on a produc
benefit of UL policies is that
necessary to keep the polici

4288507v1/015022

# "target minimally funded UL"



[redacted]

Neither side wants to spend time of this during the balance of December. Next discussion with Pat is scheduled for Friday, January 15. [redacted]

At the end of the call I referenced the October 2015 notice we received about AXA's COI increase on AULII. Told him that we would plan to do a similar analysis, but had not yet begun. He appreciated knowing our plans, as many reinsurers never provide any response at all to these notices sent by AXA. Pat briefly mentioned that AXA has found the need to target minimally funded UL at higher issue ages and larger amounts. The AULII increase is for issue ages 70+ and face amounts $1M+. We can talk to him about it more when we are ready.

# NIOL – "Non individually owned life insurance"

## Athena Universal Life - NIOL List

### Executive Summary

The NIOL (non individually owned life insurance) list for AUL was updated in 2013 and expanded to now include factors beyond policy ownership.

Methodology / Analysis / Results

This effort began in 2011 at the request of the valuation area. The valuation models were predicting large lapses in the AUL 2 block, which were not occurring. The issue was concentrated within the AUL 2 high face amount band ($1M+) and older issue ages (70+).

In Q1 2013, this study was updated, and expanded to include other characteristics of the policy (beyond simply ownership), through the following process:

1. Generated a seriatim file of all AUL policies sold since 2002 with policy details including COI by year, premiums paid by year, account value, owner, insured information, etc.
2. If the owner is on a known list of settlement companies from the 2011 study, the policy is labeled as NIOL-Settlement.
3. Additional NIOL-Settlement contracts were identified as follows:
    a. Owner names were manually scrubbed for inconsistency in order to eliminate any duplicates (e.g., names that are abbreviated)

# 2006 – Increase COIs (AXA)



## Recommendations and Next Steps

- Recommendations:
  - Lower the FY GDC from 122% to 105%, for issue ages 70+.
  - Lower the FY excess and renewal GDCs in years 2-10 from 3.5% to 2.5% for issue ages 70+. (Note: Depending on the systems estimate to implement this kind of change, a further lowering of the FY GDC might be necessary as an alternative.)
  - Increase COIs for issue ages 70+ to protect against mortality increases of at least 10-20%.
- Next steps:
  - Complete CFO/CRO review and get produc
  - Obtain compensation, proposal, and admin implement these changes.
  - Prioritize with other projects currently sched potential impacts.
  - Schedule GDC and COI changes as separa speed implementation.
  - Make informational filings in AR, OR and W



## Recommendations and Next Steps

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  - Lower the FY excess and renewal GDCs in years 2-10 from 3.5% to 2.5% for issue ages 70+. (Note: Depending on the systems estimate to implement this kind of change, a further lowering of the FY GDC might be necessary as an alternative.)
  - Increase COIs for issue ages 70+ to protect against mortality increases of at least 10-20%.

# 2006 - “New Mortality Assumption”

**Athena UL Profitability**

**and Development of a New Mortality Assumption**

**January 25, 2006**

Athena UL Profitability

and Development of a New Mortality Assumption

January 25, 2006

Confidential

- Reexamining the Mortality Assumption
  - General Methodology
  - Research Topics and Sources
  - Older Age Mortality
  - Underwriting Class Differentials
  - Mortality Improvement
  - Proposed 2006 Assumption

# 2006 – assumptions *already* changed (AXA)



Anne M Katcher
Anne.Katcher
@axa-equitable.com
04/21/2006 12:03 PM

To: Brian R Lessing/NY/AXA-Financial/Equitable@AXA-Equitable
cc: Debra Ayres/NY/AXA-Financial/Equitable@AXA-Equitable, WenLan Lai/NY/AXA-Financial/Equitable@AXA-Equitable

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Brian R Lessing
Brian.Lessing
@axa-equitable.com
04/21/2006 11:20 AM

To: Anne M Katcher/NY/AXA-Financial/Equitable@AXA-Equitable
cc: Debra Ayres/NY/AXA-Financial/Equitable@AXA-Equitable, WenLan Lai/NY/AXA-Financial/Equitable@AXA-Equitable
Subject: AUL II older ages - wholesale

Anne,

Wen's results below indicate that raising COIs to guarantees would more than compensate for the changes in mortality, reserves, and other assumptions made since the original Athena II pricing. A much more modest increase (Wen tried 40% of guarantees) would be sufficient to obtain reasonable profit margins.

Please let us know if you want to try any variations in assumptions, etc.

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