

## Secondary Market Investor Files Interest Rate Class Action

After years of pursuing life insurers with Cost of Insurance (COI) class actions, we are now seeing a new life insurance secondary market investor strategy — suing life insurers on a class action basis for not paying enough interest.

On December 21, 2020, in what appears to be the first of these cases, LSIMC, LLC (a Delaware limited liability company that allegedly has operated in the business of administering and acquiring life settlement contracts) commenced a purported class action against American General Life Insurance Company in the U.S. District Court for the Central District of California (Western District).

According to LSIMC, American General promised to calculate interest on universal life account/accumulation values “based only on expectations of future investment earnings” but that American General instead has been basing its calculations on “shareholder-driven profit targets and the ‘competitive environment.’” As a result, according to LSIMC, American General has been paying only the minimum 3 percent credited interest rate on policies like those owned by LSIMC, when American General and other insurers have “for the past several years, typically projected and earned returns between 5 and 6.5%.” LSIMC further alleges that, by paying the minimum interest rate (despite the existence of what LSIMC describes as a “Single Factor Credited Rate” provision), American General also avoids paying “persistency bonus” rates of interest, accrues increased premium charges, and induces policy lapses and surrenders.

LSIMC purports to prosecute its case on behalf of an “Investment Earnings Only California Class” that is alleged to consist of “hundreds of consumers of life insurance” who have allegedly been short-changed. LSIMC asserts claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and violations of Section 17200 *et seq.* of California’s Unfair Competition Law.

LSIMC admits that most of the policies in question were issued between 10 and 20 years ago. Importantly, sophisticated secondary market life insurance investors like LSIMC own a large percentage of the high face amount universal life insurance policies issued during this time period, and many of those policies have been (or may be) the subject of insurable interest challenges. Not surprisingly, nowhere in the complaint is there any mention of an individual insured or family.

Other insurers should be on alert for similar cases and claims and may want to review their policies to evaluate whether their contracts fall into the so-called “Single Factor Credited Rate” category described in the investor’s complaint. Obviously, there are strong defenses to these claims, including that the interest rates have been properly calculated and statutes of limitations. Of course, as noted in prior Alerts, there are also multiple defenses to the class action components of cases like this including that many of the policies that these professional investors have acquired over the years are subject to challenge on the *individualized* basis of lack of insurable interest.



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